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Exhibits

Exhibit ___ TJG-1 – *Curriculum Vitae* of Timothy J Gates

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry
4 Court, Trinity, Florida 34655.

5 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH**
6 **THE FIRM?**

7 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in regulatory and litigation
8 support, economic and financial modeling, and business plan modeling and development
9 for network industries. QSI provides consulting services for regulated utilities,
10 competitive providers, government agencies (including public utility commissions,
11 attorneys general and consumer advocates) and industry organizations. I currently serve
12 as Senior Vice President.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
14 **EXPERIENCE.**

15 A. I received a Bachelor of Science degree from Oregon State University and a Master of
16 Management degree, with an emphasis in Finance and Quantitative Methods, from
17 Willamette University's Atkinson Graduate School of Management. Since I received my
18 Masters, I have taken additional graduate-level courses in statistics and econometrics. I
19 have also attended numerous courses and seminars specific to the telecommunications
20 industry, including both the National Association of Regulatory Utility Commissioners
21 (“NARUC”) Annual and NARUC Advanced Regulatory Studies Programs.

1 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc.
2 (“MWC.COM”). I was employed by MCI and/or MWC.COM for 15 years in various public
3 policy positions. While at MWC.COM I managed various functions, including tariffing,
4 regulatory compliance, economic and financial analysis, competitive analysis, witness
5 training and MWC.COM’s use of external consultants. Prior to joining MWC.COM, I was
6 employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public
7 Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility
8 Commission. Exhibit ___TJG-1 contains a complete summary of my work experience and
9 education.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

11 A. Yes, on several occasions. I have testified in the following cases in North Dakota: PU-
12 2320-90-183, PU-2065-02-465, PU-2342-01-296, PU-05-451, PU-08-61and PU-08-176
13 (Consolidated -- the previous proceeding between Midcontinent and Missouri Valley
14 Communications, Inc), and PU-08-97. I have testified more than 200 times in 47 states
15 and Puerto Rico, and filed comments with the Federal Communications Commission
16 (“FCC”) on various public policy issues including costing, pricing, local entry,
17 competition, universal service, strategic planning, mergers and network issues.

18 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?**

1 A. Yes. I have been involved in numerous interconnection arbitrations, including
2 interconnection cases with rural local exchange carriers (“LECs”).¹

3 **Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?**

4 A. I am testifying on behalf of the petitioner, Midcontinent Communications
5 (“Midcontinent”).²

6 **Q. IS THERE ANOTHER WITNESS TESTIFYING ON BEHALF OF**
7 **MIDCONTINENT IN THIS PROCEEDING?**

8 A. Yes. Mr. W. Thomas Simmons, the Senior Vice President of Public Policy for
9 Midcontinent, also is providing testimony in this proceeding.

10 **II. PURPOSE, ORGANIZATION AND SUMMARY OF TESTIMONY**

11 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

12 A. The purpose of this testimony is to support the Petition for arbitration and request for
13 interconnection filed by Midcontinent on November 14, 2011.³

14 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

¹ The FCC has defined the term “rural incumbent local exchange carrier” as a carrier that is both an incumbent LEC and satisfies the definition of rural telephone company. *See* 47 C.F.R. § 54.5, § 51.5.

² Midcontinent is a “competitive local exchange carrier” as defined under the Telecommunications Act of 1996 (Pub. LA. No. 104-104, 110 Stat. 56 (1996) (“Telecom Act” or “Act”), and N.D.C.C. §49-21-01(2).

³ Petition for Arbitration of Midcontinent Communications, Case No. PU-11-543, Before the North Dakota Public Service Commission, filed November 14, 2011 (“Petition”).

1 A. My testimony provides background on interconnection disputes generally,
2 interconnection issues with rural local exchange carriers (“rural LECs”) specifically, and
3 shows how the FCC *Section 251(a) Declaratory Ruling* issued in May of last year affects
4 this proceeding.⁴ I also provide information on the current operational issues in the
5 Williston exchange and discuss how the public interest standard should be interpreted in
6 this interconnection dispute. Finally, I discuss the Midcontinent proposal for
7 interconnection and show that it is reasonable, consistent with the *Section 251(a)*
8 *Declaratory Ruling* and the FCC’s more recent *ICC/USF Transformation* order, and will
9 result in significant consumer benefits if approved.

10 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR TESTIMONY.**

11 A. Distinct from the previous arbitration with Missouri Valley, Midcontinent is requesting
12 limited facilities-based interconnection in Williston pursuant to sections 251(a) and (b) of
13 the Act. This interconnection request is consistent with the FCC *Section 251(a)*
14 *Declaratory Ruling* which clarified interconnection responsibilities for rural LECs and
15 with the more recent *FCC ICC/USF Transformation* order, which established bill and
16 keep as the long-run default methodology for all forms of intercarrier compensation,
17 including reciprocal compensation. The facilities-based interconnection is in the public
18 interest because it will result in competition and provides significant benefits to
19 consumers in Williston at a time when Missouri Valley is struggling to meet demand and
20 to provide timely and high quality services.

⁴ **DECLARATORY RULING**, 26 FCC Rcd 8259, 8286-70 (2011) (“*Section 251(a) Declaratory Ruling*”).

1 While many of the technical aspects of the interconnection are resolved, there are still
2 some important areas of dispute. Perhaps the most hotly disputed issue is the
3 methodology for reciprocal compensation. Missouri Valley's proposal to use an
4 exorbitant rate (\$0.030249 per minute) for reciprocal compensation violates the Act and
5 FCC rules and is many times higher than the reciprocal compensation rates now in effect
6 in North Dakota.

7 Midcontinent proposes bill and keep for reciprocal compensation (\$0.00 per minute),
8 which is consistent with the FCC default methodology and with the vast majority of
9 Midcontinent interconnection agreements in North Dakota. My testimony provides the
10 FCC's justification for bill and keep, and highlights the many problems with Missouri
11 Valley's proposal. In short, bill and keep is appropriate for the following reasons: (1) it
12 is consistent with the FCC's goal of moving to bill and keep as the default mechanism for
13 all intercarrier compensation; (2) it is consistent with the Act and the FCC's rules for
14 reciprocal compensation; (3) it is a common mechanism for reciprocal compensation in
15 North Dakota and around the country; (4) it imposes fewer regulatory burdens on the
16 parties; and (5) reduces rate arbitrage and competitive distortions.

17 The mechanics of Midcontinent's proposed access charge transition mechanism is
18 another area of dispute between the parties. Midcontinent has proposed, and Missouri
19 Valley has accepted, a six month transition period wherein Midcontinent will pay
20 Missouri Valley 75 percent of the average monthly switched access revenues associated
21 with customers who convert from resale to a facilities-based arrangement with

1 Midcontinent. The dispute is over how and when to convert these existing resale
2 customers and how to determine the average switched access revenues. Midcontinent
3 recommends a set number of conversions to occur per week and the use of an average
4 switched access revenue calculation to apply to each conversion for purposes of the
5 payments.

6 Missouri Valley does not agree to any set number of conversions per week or per month.
7 Further, Missouri Valley recommends calculating each customer's actual average
8 switched access revenue and then multiplying that amount by 75 percent to determine
9 that individual customer's payment for the six month transition period. With no set
10 number of conversions to occur each month, and the burdensome requirement to
11 calculate the actual average access revenues for each customer converted, Missouri
12 Valley's proposal would be extremely difficult to implement.

13 My testimony recommends that the Commission adopt Midcontinent's access
14 replacement proposal as it is administratively efficient, should result in almost identical
15 additional revenues for Missouri Valley, and provides certainty for the providers and for
16 customers affected by the conversion.

17 This testimony also describes the FCC's Access Revenue Recovery Mechanism, and how
18 this mechanism mitigates against any lost intercarrier compensation revenues that
19 Missouri Valley may experience until the middle of 2020.

1 **III. BACKGROUND ON INTERCONNECTION RESPONSIBILITIES**

2 **Q. WHAT IS INTERCONNECTION?**

3 A. Interconnection is the physical linking of local networks for the purpose of exchanging
4 traffic between customers subscribed to the respective networks. The FCC recognized
5 the need for the linking of networks to exchange traffic when it defined the term
6 “interconnection” in the *Local Competition Order* at paragraph 176 in the following
7 manner:

8 We conclude that the term “interconnection” under section 251(c)(2)
9 refers only to the physical linking of two networks for the mutual
10 exchange of traffic.

11 While the FCC order quoted above refers to the term “interconnection” under section
12 251(c) the definition of “interconnection” is equally applicable to the more general
13 obligations for interconnection under sections 251(a) and 251(b).

14 **Q. PLEASE PROVIDE A GENERAL OVERVIEW OF THE ECONOMIC**
15 **RATIONALE FOR INTERCONNECTION PURSUANT TO THE ACT.**

16 A. The interconnection of networks is essential for the provision of telecommunications
17 services by providers such as Midcontinent. It also is critical for consumers, since
18 without interconnection there would be no alternative services from which to choose.
19 Indeed, interconnection was one of the key provisions of the Act that allows for
20 competitive entry.

1 **Q. WHAT DID THE FCC STATE WITH RESPECT TO LOCAL COMPETITION**
2 **AND THE BENEFITS TO CONSUMERS?**

3 A. In the dozens of orders issued by the FCC regarding local competition issues it has
4 consistently supported the Act's requirement to removed barriers to competition for local
5 markets in both urban and rural areas. In the *Local Competition Order*, for instance, the
6 FCC stated:

7 Competition in local exchange and exchange access markets is desirable,
8 not only because of the social and economic benefits competition will
9 bring to consumers of *local* services, but also because competition
10 eventually will eliminate the ability of an incumbent local exchange
11 carrier to use its control of bottleneck local facilities to impede free market
12 competition. Under section 251, incumbent local exchange carriers
13 (LECs), including the Bell Operating Companies (BOCs), are mandated to
14 take several steps to open their networks to competition, including
15 providing interconnection, offering access to unbundled elements of their
16 networks, and making their retail services available at wholesale rates so
17 that they can be resold.⁵

18 In that same paragraph the FCC noted that, "The opening of all telecommunications
19 markets to all providers will blur traditional industry distinctions and bring new packages
20 of services, lower prices and increased innovation to American consumers." Through
21 this proceeding Midcontinent hopes to be able to expand its facilities-based offerings to
22 consumers in the Williston exchange – through interconnection with Missouri Valley --
23 and provide consumers with an alternative choice for communications services.

24 **Q. PLEASE DISCUSS THOSE INTERCONNECTION OBLIGATIONS.**

⁵ In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, **FIRST REPORT AND ORDER**, 11 FCC Rcd. 15,499, ¶ 4 (rel. Aug 8, 1996). ("*Local Competition Order*")

1 A. The FCC and state commissions have recognized that the various subsections of section
2 251 of the Act impose escalating obligations on carriers depending upon their
3 classifications (*i.e.*, telecommunications carrier, LEC, ILEC, rural LEC). These
4 classifications are based upon their market power, economic position (*e.g.* monopoly) and
5 attendant public obligations (*e.g.*, common carrier obligations).

6 **Q. PLEASE EXPLAIN, FROM A LAY PERSON'S PERSPECTIVE, HOW THESE**
7 **INTERCONNECTION OBLIGATIONS ESCALATE.**

8 A. Section 251(a) of the Act identifies the general duties of telecommunications carriers to
9 interconnect with the facilities and equipment of other telecommunications carriers. The
10 pertinent section of the Act is reproduced below:

11 **SEC. 251.** [47 U.S.C. 251] INTERCONNECTION.

12 (a) General Duty of Telecommunications Carriers.--Each telecommunications carrier has the duty--

13 (1) to interconnect directly or indirectly with the facilities and equipment of other
14 telecommunications carriers; and

15 (2) not to install network features, functions, or capabilities that do not comply with the guidelines
16 and standards established pursuant to section 255 or 256.

17
18 **Q. PLEASE CONTINUE YOUR DESCRIPTION OF THE ESCALATING**
19 **INTERCONNECTION OBLIGATIONS IN THE ACT.**

20 A. Section 251(b) of the Act identifies the general duties of all LECs, which include resale,
21 number portability, dialing parity, access to rights-of-way and reciprocal compensation.
22 Section 251(b) is reproduced below:

1 **SEC. 251.** [47 U.S.C. 251] INTERCONNECTION.

2 (b) Obligations of All Local Exchange Carriers.--Each local exchange carrier has the following duties:

3 (1) Resale.--The duty not to prohibit, and not to impose unreasonable or discriminatory conditions
4 or limitations on, the resale of its telecommunications services.

5 (2) Number portability.--The duty to provide, to the extent technically feasible, number portability
6 in accordance with requirements prescribed by the Commission.

7 (3) Dialing parity.--The duty to provide dialing parity to competing providers of telephone
8 exchange service and telephone toll service, and the duty to permit all such providers to have
9 nondiscriminatory access to telephone numbers, operator services, directory assistance, and
10 directory listing, with no unreasonable dialing delays.

11 (4) Access to rights-of-way.--The duty to afford access to the poles, ducts, conduits, and rights-of-
12 way of such carrier to competing providers of telecommunications services on rates, terms, and
13 conditions that are consistent with section 224.

14 (5) Reciprocal compensation.--The duty to establish reciprocal compensation arrangements for the
15 transport and termination of telecommunications.

16
17 Section 251(c) imposes additional obligations and specific interconnection duties on
18 ILECs, including the duty to negotiate an interconnection agreement in good faith,
19 provide interconnection on more specific terms and conditions, provisioning of
20 unbundled network elements (“UNEs”), requirements for resale at wholesale rates,
21 providing notice of network changes and collocation when requested. The FCC’s *Local*
22 *Competition Order* at paragraph 1241 describes these additional obligations as follows:

23 Section 251(c) imposes obligations on incumbent LECs in addition to the
24 obligations set forth in sections 251(a) and (b). It establishes obligations
25 of incumbent LECs regarding: (1) good faith negotiation; (2)
26 interconnection; (3) unbundling network elements; (4) resale; (5)
27 providing notice of network changes; and (6) collocation.

28 While Section 251(c) applies to incumbent LECs generally, there is a specific exemption
29 from Section 251(c) for rural carriers under Section 251(f) of the Act. The FCC’s *Local*
30 *Competition Order* at paragraph 1249 describes the rural exemption as follows:

1 Section 251(f)(1) grants rural telephone companies an exemption from
2 section 251(c), until the rural telephone company has received a bona fide
3 request for interconnection, services, or network elements, and the state
4 commission determines that the exemption should be terminated.⁶
5

6 Missouri Valley is a rural telephone company and may claim the rural exemption in
7 North Dakota. As noted below, however, the rural exemption is not an issue in this
8 proceeding since Midcontinent is seeking interconnection pursuant to sections 251(a) and
9 (b) and not pursuant to section 251(c).

10
11 **IV. MIDCONTINENT IS NEITHER SEEKING INTERCONNECTION PURSUANT**
12 **TO SECTION 251(C) NOR THE TERMINATION OF MISSOURI VALLEY'S**
13 **RURAL EXEMPTION**

14 **Q. IS MIDCONTINENT REQUESTING INTERCONNECTION WITH MISSOURI**
15 **VALLEY PURSUANT TO SECTION 251(C) OF THE ACT IN THIS**
16 **PROCEEDING?**

17 A. No. Midcontinent is not requesting interconnection with Missouri Valley pursuant to
18 section 251(c). If Midcontinent were seeking section 251(c) interconnection, then it
19 would need to seek termination or modification of Missouri Valley's rural exemption

⁶ As referred to above, a rural LEC is defined as a local exchange carrier operating entity to the extent that such entity "(A) provides common carrier service to any local exchange carrier study area that does not include either-- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof . . .; or (ii) any territory, incorporated or unincorporated, included in an urbanized area . . .; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 153(37); § 54.5, and §51.5. See also N.D.C.C. § 49-21-01(16).

1 discussed above. Instead, Midcontinent has requested interconnection for the exchange
2 of local traffic pursuant to sections 251(a) and (b) of the Act.⁷

3 **Q. IF MIDCONTINENT IS NOT SEEKING THE TERMINATION OF MISSOURI**
4 **VALLEY'S RURAL EXEMPTION, IS IT YOUR OPINION THAT THERE IS NO**
5 **NEED TO INVESTIGATE WHETHER THE INTERCONNECTION REQUEST**
6 **IS UNDULY ECONOMICALLY BURDENSOME, TECHNICALLY FEASIBLE, OR**
7 **CONSISTENT WITH THE UNIVERSAL SERVICE PRINCIPLES IDENTIFIED IN**
8 **SECTION 254 OF THE ACT?**

9 A. Yes. Although I am not a lawyer, I have been advised that those provisions in section
10 251(f)(1) only come into play if and when a provider seeks to terminate a rural carrier's
11 exemption from section 251(c) interconnection requirements.

12 **V. INTERCONNECTION IS REQUIRED REGARDLESS OF THE STATUS OF**
13 **MISSOURI VALLEY'S RURAL EXEMPTION**

14 **Q. HAS THE FCC CLARIFIED THE RURAL LEC RESPONSIBILITIES WITH**
15 **RESPECT TO INTERCONNECTION REQUESTS?**

16 A. Yes. Much like Missouri Valley in the previous Midcontinent arbitration, other rural
17 LECs have argued that unless and until their rural exemption is terminated, they do not
18 have to establish interconnection with other providers. In response to petitions on this
19 issue, the FCC issued its *Section 251(a) Declaratory Ruling* on May 26, 2011.

⁷ See Petition at pages 1-2.

1 **Q. DOES THE FCC SECTION 251(A) DECLARATORY RULING CLARIFY SOME**
2 **OF THE DISPUTES THAT HAVE OCCURRED SINCE THE PASSAGE OF THE**
3 **ACT?**

4 A. Yes. The FCC stated,

5 We clarify that LECs are obligated to fulfill all of the duties set forth in
6 sections 251(a) and (b) of the Act, including the duty to interconnect and
7 exchange traffic, **even if the LEC has a rural exemption from the**
8 **obligations set forth in section 251(c).**⁸ (emphasis added)

9 Until this ruling, there were numerous disputes and some confusion regarding the
10 interconnection requirements in the Act for rural LECs.

11 **Q. DID THE FCC ADDRESS THE NEED FOR INTERCONNECTION IN RURAL**
12 **MARKETS AND ITS IMPACT ON CONSUMERS AND COMPETITION IN THE**
13 **SECTION 251(A) DECLARATORY RULING?**

14 A. Yes. At paragraph 12 of the *251(a) Declaratory Ruling*, the FCC stated:

15 For consumers to have a choice of service providers, competitive carriers
16 must be able to interconnect their networks with incumbent providers.
17 **Further, as the 1996 Act recognized, without the ability to exchange**
18 **telecommunications traffic with the local incumbent carrier, no**
19 **competitive provider would be able to compete effectively.** Thus, when
20 incumbent carriers resist interconnection with competitive
21 telecommunications carriers, it impedes the development of facilities-
22 based voice services in those areas. **Competition in local**
23 **telecommunications markets can deliver significant benefits to**
24 **consumers in rural communities,** including advanced features and cost
25 savings. Such competition can also spur incumbent providers to improve
26 their voice offerings and offer new services, such as broadband, to
27 compete for customers. (emphasis added)

⁸ See Section 251(a) Declaratory Ruling at ¶ 2.

1
2 These clarifications have been important to the industry but will ultimately result in
3 important benefits to consumers resulting from the introduction of competition in rural
4 areas of the country and specifically in Williston.

5 **Q. GIVEN THE FCC'S STATEMENTS ABOUT THE NEED FOR AND BENEFITS**
6 **FROM COMPETITION IN RURAL AREAS, DID THE FCC CLARIFY THE**
7 **INTERCONNECTION DUTIES OF RURAL LECs THAT HAVE AN**
8 **EXEMPTION FROM SECTION 251(C) REQUIREMENTS?**

9 A. Yes. Later in that order, the FCC discusses the harm to competition and rural Americans
10 if the rural LECs refuse to interconnect with alternative carriers:

11 In particular, if section 251(f)(1) were construed to exempt rural LECs
12 from their section 251(a) and (b) duties, unless and until a state
13 commission has terminated a rural exemption, a competing carrier could
14 not avail itself of the rights to interconnection and other services that must
15 be provided under sections 251(a) and (b), which could have a detrimental
16 impact on the ability of rural Americans to benefit from competition,
17 innovation, and investment in communications networks and services.”⁹

18
19 The FCC was very specific when it clarified the basic duty to interconnect for LECs with
20 a rural exemption. Specifically, the FCC stated the following:

21 Consistent with Commission precedent, we reaffirm that all
22 telecommunications carriers, including rural carriers covered by section
23 251(f)(1), have a basic duty to interconnect their networks under section
24 251(a) and that all LECs, including rural LECs covered by section
25 251(f)(1), have the obligation to comply with the requirements set forth in
26 section 251(b). **We also clarify that a rural carrier's exemption under**
27 **section 251(f)(1) offers an exemption only from the requirements of**

⁹ Section 251(a) Declaratory Ruling at ¶ 16.

1 **section 251(c) and does not impact its obligations under sections**
2 **251(a) or (b).**¹⁰ (footnotes excluded) (emphasis added)

3 While I am not a lawyer, a fair reading of the FCC's *Section 251(a) Declaratory Ruling*
4 indicates that rural LECs with their rural exemption still intact, must abide by the section
5 251(a) and (b) interconnection requirements.

6 **VI. BACKGROUND ON THIS INTERCONNECTION DISPUTE**

7 **Q. PLEASE PROVIDE A BRIEF HISTORY OF EVENTS LEADING UP TO THIS**
8 **PROCEEDING.**

9 A. Midcontinent entered into a facilities-based interconnection agreement with US WEST
10 effective in March of 1999, which included interconnection in the Williston exchange.¹¹
11 When US WEST sold the Williston exchange to Citizens in 2000, Citizens agreed to
12 assume the interconnection obligations associated with US WEST's interconnection
13 agreements, including the agreement with Midcontinent. The Commission approved the
14 new agreement between Midcontinent and Citizens on May 18, 2001.¹² Less than two
15 years later, Citizens informed Midcontinent of its intention to sell the Williston exchange
16 to Missouri Valley. Missouri Valley honored the interconnection agreement until 2003
17 when it informed Midcontinent that it was terminating the agreement subject to the

¹⁰ *Section 251(a) Declaratory Ruling* at ¶ 14.

¹¹ Docket No. PU-1945-99-125.

¹² Case No. PU-2483-01-48.

1 negotiation of a new agreement. Those negotiations resulted in a resale agreement
2 between the parties.¹³

3 Midcontinent has been providing the resold services of Missouri Valley since 2004.¹⁴ In
4 2007, Midcontinent again sought facilities-based interconnection with Missouri Valley so
5 that it could use its own facilities to provide services to consumers, but the request was
6 denied.¹⁵ Since that time, Midcontinent has continued to resell Missouri Valley's
7 services to consumers.

8 ***Resale of Missouri Valley Services Limits Benefits to Consumers***

9
10 **Q. WHY DOES MIDCONTINENT CONTINUE TO SEEK FACILITIES-BASED**
11 **INTERCONNECTION INSTEAD OF JUST CONTINUING TO RESELL**
12 **MISSOURI VALLEY'S SERVICES?**

13 A. Continuing to resell Missouri Valley service results in continuing reliance on Missouri
14 Valley and distinct limitations on Midcontinent and the development of competition.

15 **Q. HOW DOES RESALE LIMIT MIDCONTINENT IN THE MARKET PLACE?**

16 A. Resale is generally not thought of as a long-term solution because of the dependence
17 upon the incumbent provider and the inability to distinguish the resold service from that

¹³ Docket No. PU-04-638.

¹⁴ Case No. U-04-638.

¹⁵ See FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, Case Nos. PU-08-61 and PU-08-176 (Consolidated), dated October 8, 2008.

1 of the underlying carrier.¹⁶ Instead, resale is used to quickly enter a market without
2 having to build a network first. Once the provider is in the market on a resale basis, it
3 can continue to resell service and gradually build its own network.¹⁷ Resale also is
4 beneficial in areas where building a separate stand-alone network would be
5 uneconomical.

6 **Q. CAN YOU PROVIDE SOME EXAMPLES OF HOW MIDCONTINENT IS**
7 **LIMITED AND HOW ITS PROFITABILITY MIGHT BE IMPAIRED BY**
8 **RESALE?**

9 A. Yes. Over its own network, Midcontinent provides all of the services and features that
10 one would expect (voice mail, distinctive ringing, T1s (24 digital channels or a 1.5 Mbps
11 unchannelized circuit), call waiting, call forwarding, 3-way calling, caller ID, toll denial,
12 a freeze on local service, etc.). Midcontinent also can offer unique features, such as
13 caller identification on televisions and hosted phone (a PBX alternative). Midcontinent's
14 offerings in Williston, however, are limited because of its resale agreement with Missouri
15 Valley. For instance, not only can Midcontinent not offer caller ID through the television
16 or its hosted phone service, it cannot offer distinctive ringing, voicemail, T1s or a local
17 service freeze when it resells Missouri Valley service. While this may seem to be a short
18 list, these are important services to consumers, and all Midcontinent customers should be
19 able to receive the same services and quality of services.

¹⁶ Resale is useful in those areas where it is currently uneconomical to build additional facilities. As such, many competitive carriers have agreements that include resale, or perhaps two agreements, one for resale and one for interconnection.

¹⁷ See FCC's *Local Competition Order*, at ¶ 12.

1 **Q. YOU ALSO STATED THAT RESALE IMPACTS MIDCONTINENT'S**
2 **PROFITABILITY. PLEASE EXPLAIN THAT COMMENT.**

3 A. When reselling Missouri Valley services, Midcontinent has no ability to cut its cost of
4 telecommunications services relative to the retail rates of Missouri Valley. No matter
5 how well Midcontinent manages its own business, or how efficient it becomes, it will still
6 have the same narrow margin (16.15 percent discount off retail rates with Missouri
7 Valley) upon which to meet its own costs (billing, collection, marketing, customer
8 service, etc.) and earn a profit. For that reason, the reseller has only a limited ability to
9 attract customers from the incumbent or to create any meaningful competitive benefits for
10 consumers, and, as such, cannot be considered effective competition. It is only with
11 facilities-based competition that companies like Midcontinent can gain their
12 independence and differentiate their services from those of the incumbent.

13 **Q. SO, IS IT CORRECT THAT INTERCONNECTION IN WILLISTON WILL**
14 **ALLOW MIDCONTINENT TO OFFER UNIQUE SERVICES THAT IT**
15 **CANNOT OFFER TODAY AND TO CONTROL ITS OWN COSTS?**

16 A. Yes. Interconnection will allow Midcontinent to offer services not available today in
17 Williston and to price services based on its own cost structure, and not that of Missouri
18 Valley. So in addition to new and different services, facilities-based competition is more
19 conducive to price competition. Further, and as discussed by Mr. Simmons, Missouri
20 Valley's quality of service, availability of facilities, and customer responsiveness has also

1 been substandard in the Williston area. As noted in the Midcontinent Petition, Missouri
2 Valley's performance has dropped off precipitously since 2008:

3 Midcontinent has found that Missouri Valley no longer can install service
4 in a timely fashion; that Missouri Valley often takes much longer to
5 respond to service requests than Midcontinent would take in its other
6 markets; and that in some cases Missouri Valley is unable to provide
7 service at all in areas where Midcontinent has cable facilities and could
8 provide facilities-based services if interconnection were in place.¹⁸

9 This is particularly problematic given the dramatic growth in that area and the need for
10 new services.

11 **Q. PLEASE SUMMARIZE WHY FACILITIES-BASED COMPETITION IS**
12 **CRITICAL TO THE DEVELOPMENT OF COMPETITION IN**
13 **TELECOMMUNICATIONS AND MORE SPECIFICALLY, IN WILLISTON**
14 **TODAY?**

15 A. One of the goals of the Telecommunications Act was to encourage investment in
16 networks, new technologies and innovative services.¹⁹ Midcontinent's activities are
17 consistent with that goal; it has invested in network facilities in North Dakota and has
18 facilities in the Williston area. It makes sense for a carrier with its own network to use
19 that network in serving its customers. Moreover, Midcontinent's request for
20 interconnection will result in alternative offerings for consumers, innovative services and
21 put needed incentives in place for Missouri Valley to improve its responsiveness and
22 service quality.

¹⁸ See Petition at 2.

¹⁹ See FCC's *Local Competition Order* at ¶ 4.

1 **Missouri Valley's Performance and Growth in Williston Can be Addressed,**
2 **at Least in Part, Through Midcontinent's Interconnection Request**

3 **Q. IS MIDCONTINENT HARMED BY BEING FORCED TO RESELL MISSOURI**
4 **VALLEY'S SERVICES?**

5 A. Yes. As noted above, without the ability to utilize its own network, Midcontinent is
6 relegated to a "resale" role in the market. Successful marketing requires product
7 differentiation and price competition. For instance, when Midcontinent uses its own
8 network it offers some features and functions that Missouri Valley does not offer, and can
9 provision services faster than Missouri Valley does today in Williston.²⁰

10 **Q. HOW DOES MISSOURI VALLEY'S OPERATIONAL PERFORMANCE**
11 **AFFECT MIDCONTINENT?**

12 A. Mr. Simmons provides the specifics on Missouri Valley's performance, but the vast
13 majority of consumers cannot distinguish between the provider's name on their bill and
14 the service they receive. In other words, a Midcontinent customer being served through a
15 resale agreement with Missouri Valley, still appears to be Midcontinent service to the
16 customer. It is cold comfort for consumers when they complain to their chosen provider
17 (Midcontinent in this case) about long held orders or poor quality service to hear from
18 Midcontinent that they are waiting for Missouri Valley to fix the problem. In short,

²⁰ The FCC specifically recognized the benefits of innovative offerings from other carriers when it stated, "As the Commission has recognized, **Congress did not intend to insulate small or rural LECs from competition, preventing subscribers in those communities from obtaining the benefits of competitive local exchange service, including innovative offerings.**" See Section 251(a) Declaratory Ruling at ¶22. (emphasis added)

1 Missouri Valley's performance reflects on Midcontinent and harms its reputation in the
2 market place.

3 **Q. HOW DOES THE INABILITY TO USE ITS NETWORK FOR ALL SERVICES**
4 **IMPACT MIDCONTINENT?**

5 A. Midcontinent is less likely to build additional facilities if it cannot use those facilities as
6 anticipated by the Act. Artificially restricting Midcontinent from exchanging traffic with
7 Missouri Valley through an interconnection agreement is not in the public interest.

8 **Q. WHAT IS UNIQUE ABOUT WILLISTON THAT MAKES THIS**
9 **INTERCONNECTION REQUEST EVEN MORE URGENT FROM A**
10 **CONSUMER PERSPECTIVE?**

11 A. Williston is unique because of the tremendous growth that has occurred because of the
12 local oil industry. In a recent national news broadcast a real estate developer noted that
13 the town will likely double in population in the next five to seven years, and that there are
14 plans to build industrial parks, hotels, restaurants and a medical center.²¹ Mayor E.
15 Ward Koeser of Williston also has said there are 2,000 to 3,000 job openings.²² All of
16 this is putting pressure on the community to meet consumer needs, and the need for high
17 quality communications services is burgeoning as well. Without an interconnection

²¹ See Rock Center with Brian Williams, "Oil Boom Brings Growing Pains to North Dakota Town," aired November 4, 2011.

²² See National Public Radio, "New Boom Reshaped Oil World, Rocks North Dakota." September 25, 2011. Mr. Simmons describes the explosive growth in Williston in more detail in his testimony.

1 agreement, it appears that Missouri Valley will continue to struggle to meet consumer
2 demand in Williston. With an interconnection agreement both Missouri Valley and
3 Midcontinent can assist consumers with their communications needs.

4 ***Competition Will Benefit Consumers and the Efficient Operation of the***
5 ***Market***

6 **Q. IF MIDCONTINENT IS ALLOWED TO USE ITS OWN NETWORK TO OFFER**
7 **SERVICES IN WILLISTON, MIGHT MISSOURI VALLEY LOSE SOME**
8 **CUSTOMERS?**

9 A. Yes. It is likely that both Missouri Valley and Midcontinent will win and lose customers over
10 time as they react to consumers' needs in Williston. Of course that happens today in the resale
11 environment as well. Winning and losing customers is what makes competition work from the
12 perspective of the consumer. It is that choice of providers -- and the ability to exercise that
13 choice -- that provides incentives for Missouri Valley and Midcontinent to provide the best
14 service they can.

15 **Q. BUT IF BOTH MIDCONTINENT AND MISSOURI VALLEY WIN AND LOSE**
16 **CUSTOMERS OVER TIME, IS THAT CUSTOMER "CHURN" IN THE PUBLIC**
17 **INTEREST?**

18 A. Yes. The incentive to keep and attract consumers in a competitive market, while sometimes
19 difficult for the providers, is precisely what the Act anticipated when the law was passed in
20 1996.²³ Indeed, in the *Section 251(a) Declaratory Ruling* the FCC emphasized that point when it

²³ When I say keeping and attracting customers is "sometimes difficult for the providers..." I am referring to the need to monitor and respond to consumer needs and wants in the marketplace. It is only through diligent monitoring and understanding of consumer demands that a provider can keep current customers

1 stated, "Congress did not intend to insulate small or rural LECs from competition, preventing
2 subscribers in those communities from obtaining the benefits of competitive local exchange
3 service, including innovative offerings."²⁴

4 **Q. GIVEN THE FCC'S *ICC/USF TRANSFORMATION ORDER*, WILL BOTH**
5 **MIDCONTINENT AND MISSOURI VALLEY BE ABLE TO PROTECT**
6 **INTERCARRIER COMPENSATION REVENUES OVER TIME?**

7 A. No. Only incumbent LECs can avail themselves of the new "Eligible Recovery" process. While
8 CLECs are able to increase rates (**market permitting**) to cover the loss of such revenues, CLECs
9 are not provided a formal mechanism with which to determine and charge such fees. As
10 described later in this testimony, incumbent LECs like Missouri Valley will be able to recoup the
11 majority of lost intercarrier compensation revenues (referred to as "Eligible Recovery") until the
12 middle of 2020, albeit at a decreasing rate over time.

13 **VII. MIDCONTINENT'S INTERCONNECTION REQUEST IS MORE THAN**
14 **REASONABLE AND CONSISTENT WITH THE FCC'S SECTION 251(A)**
15 **DECLARATORY RULING**

16 **Q. PLEASE DESCRIBE MIDCONTINENT'S REQUEST FOR**
17 **INTERCONNECTION.**

18 A. Midcontinent is requesting a section 251(a) and (b) interconnection agreement using bill
19 and keep for reciprocal compensation that allows it to exchange local traffic with

and hopefully attract new customers, thereby minimizing customer churn over time. The ultimate winner in this iterative equation is the consumer, who can select from offerings that meet his or her needs.

²⁴ See Section 251(a) Declaratory Ruling at ¶22.

1 Missouri Valley at the Missouri Valley central office in Williston. This agreement is not
2 unique, and is similar to other agreements that Midcontinent has in place with other rural
3 phone companies in North Dakota.²⁵

4 **Q. HAS THIS COMMISSION APPROVED OTHER INTERCONNECTION**
5 **AGREEMENTS IN NORTH DAKOTA THAT ARE SIMILAR TO THE ONE**
6 **BEING REQUESTED BY MIDCONTINENT?**

7 A. Yes. Moreover, and as shown below, the reciprocal compensation rates for those other
8 agreements are a fraction of what Missouri Valley has proposed.

9 ***Midcontinent Has Accepted Missouri Valley's Recommendations on the***
10 ***Technical Aspects of Interconnection***

11 **Q. PLEASE DESCRIBE THE TECHNICAL REQUIREMENTS FOR THE**
12 **INTERCONNECTION AT THE WILLISTON CENTRAL OFFICE.**

14 A. Midcontinent has stated that it is willing to interconnect at a mutually-agreed point (the
15 point of interconnection (“POI”) or interconnection point) or at any place in the Williston
16 exchange. Missouri Valley recommended that the interconnection occur at the Williston
17 central office and Midcontinent agreed to that request.

18 **Q. HAVE THE PARTIES AGREED ON THE TYPE OF INTERCONNECTION**
19 **(ELECTRICAL VERSUS OPTICAL FACILITY) TO USE AT THE WILLISTON**
20 **CENTRAL OFFICE POI?**

²⁵ Midcontinent’s interconnection agreements with other providers are discussed later in this testimony.

1 A. Yes. I understand that Missouri Valley has proposed that interconnection be
2 accomplished at the DS-1 (a digital signal with a capacity of 24 circuits or 1.5 Mbps)
3 level, using an electrical facility not an optical/fiber facility.²⁶ While Midcontinent was
4 willing to accept either electrical or optical interconnection, it has agreed to the DS-1
5 proposal for interconnection as suggested by Missouri Valley.

6 **Q. HAVE THE PARTIES AGREED TO A SOLUTION FOR LOCAL NUMBER**
7 **PORTABILITY?**

8 A. Yes. Midcontinent recommended that the parties provide number portability to each
9 other as described in Attachment 3 to the proposed interconnection agreement.²⁷
10 Missouri Valley has accepted that proposal.²⁸

11 **Q. IT APPEARS THAT THERE ARE SEVERAL AREAS OF AGREEMENT**
12 **BETWEEN THE PARTIES. IS THAT CORRECT?**

13 A. Yes. There is little or no disagreement on major parts of the interconnection agreement –
14 the technical aspects of the physical interconnection, local number portability, general
15 terms and conditions (sections 1 and 2), services provided under the agreement (section
16 3), definitions (section 4), etc. Where there are some continuing disagreements in these
17 areas, they will be addressed later in this testimony.

²⁶ See for instance, Missouri Valley's Response to Midcontinent's Draft Interconnection Agreement, dated February 28, 2012, at 3.

²⁷ The proposed interconnection agreement was submitted to Missouri Valley on February 3, 2012.

²⁸ See for instance, Missouri Valley's Response to Midcontinent's Draft Interconnection Agreement, dated February 28, 2012, at 4.

1 ***Midcontinent's Interconnection Request is Limited and Provides***
2 ***Transitional Support to Missouri Valley***

3
4 **Q. IN THE HEADING TO THIS SECTION YOU STATE THAT MIDCONTINENT'S**
5 **INTERCONNECTION PROPOSAL IS MORE THAN REASONABLE. PLEASE**
6 **EXPLAIN WHY YOU CONSIDER THE PROPOSAL TO BE "MORE THAN**
7 **REASONABLE."**

8 A. I consider the Midcontinent proposal to be more than reasonable because Midcontinent
9 has proposed and agreed to terms that are not required by the Act or the FCC's rules. For
10 instance, Midcontinent has agreed to Missouri Valley's point of interconnection, even
11 though it is less convenient and more expensive for Midcontinent to come to Missouri
12 Valley's switch than to interconnect at a meet point. Midcontinent also has proposed a
13 timeline for the transition to facilities-based service that reduces the burden on Missouri
14 Valley by stretching out the customer cutovers over a year-long period, rather than
15 insisting on a shorter period.

16 The interconnection request is also more than reasonable because Midcontinent has
17 proposed a temporary transitional compensation mechanism to buffer the impact of lost
18 switched access revenues for Missouri Valley. I have never seen a company offer such a
19 mechanism, and it is not required based on a reading of the Act and its interconnection
20 requirements.

21 **Q. HOW WOULD THE TRANSITION MECHANISM WORK?**

1 A. Midcontinent proposes to pay Missouri Valley 75 percent of the switched access charges
2 that a typical customer would generate had the customer not converted from resale to a
3 facilities-based relationship with Midcontinent. Missouri Valley has accepted this
4 proposal.²⁹ The transitional compensation would continue for a period of six months
5 from the date of the customer's conversion.

6 **Q. DOESN'T THE RECENT FCC *ICC/USF TRANSFORMATION ORDER* PROVIDE**
7 **A TRANSITION MECHANISM FOR RURAL LECS WITH RESPECT TO**
8 **SWITCHED ACCESS CHARGE REVENUES?**

9 A. Yes, it does. Between the Access Recovery Charge ("ARC")³⁰ and the Connect America
10 Fund ("CAF"), Missouri Valley will be able to collect approximately 95 percent of the
11 difference between its baseline access revenue (2011 interstate access revenues + 2011
12 intrastate terminating access revenues + net reciprocal compensation revenues) and its
13 actual access revenue in 2012.³¹ I will provide a complete discussion of the transition
14 mechanism later in this testimony.

15 **Q. HAD THE FCC ISSUED ITS *ICC/USF TRANSFORMATION ORDER* WHEN**
16 **MIDCONTINENT PROPOSED ITS OWN TRANSITION MECHANISM TO**
17 **MISSOURI VALLEY?**

²⁹ See Missouri Valley Response to Midcontinent Draft Interconnection Agreement, dated February 28, 2012, at page 5.

³⁰ See FCC's **REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**, FCC 11-61; dated November 18, 2011; at ¶ 36.

³¹ *Id.* at ¶ 39.

1 A. No. Midcontinent made this proposal prior to seeing the FCC order.

2 **VIII. OUTSTANDING ISSUES TO BE RESOLVED BY THE COMMISSION**

3
4 **Q. WHAT ISSUES ARE STILL IN DISPUTE IN THIS PROCEEDING?**

5 A. There are some major areas of disagreement between the parties and then there are some
6 minor areas of disagreement. The major areas of disagreement revolve around the
7 following issues:

- 8
- Reciprocal compensation

9

 - Transition of resale customers to facilities-based arrangements

10

 - Details on the transitional compensation mechanism

11 The items identified above are the major areas of disagreement between Midcontinent
12 and Missouri Valley.

13 **Q. WHAT ARE THE MINOR AREAS OF DISAGREEMENT BETWEEN THE**
14 **PARTIES?**

15 A. There are some differences in proposed language for the general terms and conditions
16 that relate to legal issues (the effect of appealing a decision concerning the
17 interconnection agreement), modifications regarding traffic type distinctions,
18 organization of the agreement, etc.

1 **Missouri Valley's Proposed Reciprocal Compensation is Fatally Flawed**

2
3 **Q. PLEASE DEFINE RECIPROCAL COMPENSATION.**

4 A. Today there are two major types of intercarrier compensation – access charges and
5 reciprocal compensation. Each type of compensation is governed by its own cost
6 standards and apply to specific types of traffic.³² Access charges are paid by
7 interexchange carriers for interexchange traffic, and reciprocal compensation is paid by
8 LECs for the transport and termination of local traffic.³³

9 **Q. WHAT DO YOU MEAN WHEN YOU REFER TO THE “TRANSPORT AND**
10 **TERMINATION” OF LOCAL TRAFFIC?**

11 A. Transport and termination are defined in the FCC’s rules. Below I have reproduced the
12 FCC definitions of transport and termination found in 47 CFR §51.701(b) (Scope of
13 transport and termination pricing rules):

14 (c) *Transport*. For purposes of this subpart, **transport is the transmission and**
15 **any necessary tandem switching of Non-Access Telecommunications**
16 **Traffic** subject to section 251(b)(5) of the Communications Act of 1934, as
17 amended, 47 U.S.C. 251(b)(5), from the interconnection point between the two
18 carriers to the terminating carrier’s end office switch that directly serves the called
19 party, or equivalent facility provided by a carrier other than an incumbent LEC.
20 (emphasis added)

³² Switched access charges are developed pursuant to the FCC’s separations rules (Part 32 (Uniform System of Accounts); Part 64 (Division of Regulated and Non-regulated Services); Part 36 (Jurisdictional Separations/Interstate v. Intrastate); and Part 69 (Access Charge Development) – an embedded costing approach. Reciprocal compensation is governed by economic or “forward looking” cost studies described in the Act as “additional costs” and defined by the FCC as “TELRIC.”

³³ See FCC Description of Intercarrier Compensation. While the FCC is moving all forms of intercarrier compensation to bill and keep over time, these distinctions are still important for the instant dispute between Missouri Valley and Midcontinent.

1 (d) *Termination*. For purposes of this subpart, **termination is the switching of**
2 **Non-Access Telecommunications Traffic at the terminating carrier's end**
3 **office switch**, or equivalent facility, and delivery of such traffic to the called
4 party's premises. (emphasis added)

5 (e) *Non-Access Reciprocal Compensation*. For purposes of this subpart, a Non-
6 Access Reciprocal Compensation arrangement between two carriers is either a
7 bill-and-keep arrangement, per §51.713, or an arrangement in which each carrier
8 receives intercarrier compensation for the transport and termination of Non-
9 Access Telecommunications Traffic.

10
11 Notice that transport and termination, which are the piece parts of reciprocal
12 compensation, are specifically defined for “**Non-Access Telecommunications Traffic.**”

13 **Q. DOES MIDCONTINENT PROPOSE TO PAY SOMETHING OTHER THAN**
14 **SWITCHED ACCESS RATES ON LONG DISTANCE TRAFFIC?**

15 A. No. Midcontinent has proposed that arrangements for non-local traffic be exchanged by
16 the parties in the same way that they are today, to the extent they are consistent with the
17 requirements of the FCC and the Commission. There is no dispute between Midcontinent
18 and Missouri Valley over compensation for long distance traffic; access charges will
19 continue to apply to such traffic.

20 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF MISSOURI VALLEY’S**
21 **PROPOSAL FOR RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC.**

1 A. Missouri Valley inappropriately proposes to use a rate apparently found in its
2 interconnection agreements with wireless providers as the reciprocal compensation rate
3 for the interconnection agreement with Midcontinent.³⁴

4 **Q. WHAT RATE IS MISSOURI VALLEY PROPOSING?**

5 A. Missouri Valley has proposed a rate of \$0.030249 per minute for reciprocal
6 compensation.³⁵ Not only is this rate unsupported and therefore inappropriate for
7 reciprocal compensation, but such exorbitant rates create incentives that are completely
8 inconsistent with the goals of the Act and the direction of the industry.³⁶ Indeed, the FCC
9 has stated that high termination charges are undermining the reliability of telephone
10 service in rural areas.³⁷

11 **Q. PLEASE EXPLAIN THE NEGATIVE INCENTIVES ASSOCIATED WITH HIGH**
12 **RATES.**

13 A. One of the FCC's stated reasons for a complete reform of intercarrier compensation was
14 to eliminate incentives for rate arbitrage. As the FCC noted when discussing the

³⁴ This rate is found in the interconnection agreements between Missouri Valley and Verizon Wireless and Sagebrush Cellular, Inc.

³⁵ See Missouri Valley Response to Midcontinent's Draft Interconnection Agreement; dated February 28, 2012, Section 3.2.1.

³⁶ The FCC has noted that high intercarrier compensation rates create incentives to avoid areas (call blocking, call chocking), increase traffic volumes (traffic pumping), disguise traffic jurisdictionality (changing call detail records), etc. Just last month the FCC issued a Declaratory Ruling (FCC DA 12-154; Released: February 6, 2012), ("*Call Completion Declaratory Ruling*") noting that "Call completion problems appear to be occurring particularly in rural areas served by rate-of-return carriers where the costs that long distance providers incur to complete calls are generally higher than in non-rural areas." (¶ 7)

³⁷ *Call Completion Declaratory Ruling* at ¶ 10.

1 consumer benefits of bill and keep, “...**bill-and-keep will over time eliminate wasteful**
2 **arbitrage schemes and other behaviors designed to take advantage of or avoid**
3 **above-cost interconnection rates**, as well as reducing ongoing call monitoring,
4 intercarrier billing disputes, and contract enforcement efforts.”³⁸ (emphasis added) More
5 specifically, the FCC stated,

6 Intercarrier compensation rates above incremental cost have enabled much
7 of the arbitrage that occurs today, **and to the extent that such rates apply**
8 **differently across providers, have led to significant marketplace**
9 **distortions**. Rates today are determined by looking at the average cost of
10 the entire network, **whereas a bill-and-keep approach better reflects the**
11 **incremental cost of termination, reducing arbitrage incentives.**³⁹
12 (emphasis added)

13 Missouri Valley’s proposed reciprocal compensation rate is dramatically higher than
14 those of other providers and will result in economic incentives for arbitrage.

15 **Q. DID MISSOURI VALLEY PROVIDE A COST BASIS OR SOME OTHER**
16 **SUPPORT FOR THE PROPOSED RECIPROCAL COMPENSATION RATE?**

17 A. No. In an attempt to understand the basis for the rate, Midcontinent propounded
18 discovery regarding the proposed reciprocal compensation rates. The initial request and
19 Missouri Valley’s supplemental response are reproduced below:

20 **REQUEST FOR PRODUCTION NO. 5:** Provide copies of all studies, reports
21 and other documents that support the rate for reciprocal compensation proposed
22 on page 3 of the Response.

³⁸ See *ICC/USF Transformation Order* at ¶ 749.

³⁹ *Id.* at ¶ 752.

1 **SUPPLEMENTAL RESPONSE NO. 5: Not applicable. No such reports**
2 **were relied on.**⁴⁰ (emphasis in original)

3 **Q. YOU REFERRED TO MISSOURI VALLEY’S PROPOSED RECIPROCAL**
4 **COMPENSATION RATES AS “EXORBITANT.” PLEASE EXPLAIN.**

5 A. The rates proposed by Missouri Valley are exorbitant and inappropriate for at least two
6 reasons. First, the proposed rate is as much as fifteen times higher than the reciprocal
7 compensation rates that Midcontinent is paying to other carriers, including other rural
8 LECs. Second, Missouri Valley has failed to justify the rate on any basis, let alone the
9 required basis identified in the Act and in the FCC’s rules.

10 **Q. IS THERE A COST STANDARD FOR RECIPROCAL COMPENSATION?**

11 A. Yes. Reciprocal compensation, which is composed of activities and costs associated with
12 the transport and termination of traffic, is to be priced at TELRIC rates or bill and keep.
13 Indeed, in the *Local Competition Order* the FCC stated,

14 The 1996 Act requires that charges for transport and termination of traffic
15 set based on “additional cost.” The Commission concludes that state
16 commissions, during arbitrations, should set symmetrical prices based on
17 the local telephone company’s forward-looking economic costs. The state
18 commissions would use the TELRIC methodology when establishing rates
19 for transport and termination.⁴¹

⁴⁰ See Missouri Valley Communications, Inc.’s March 25, 2012 Supplemental Answers to Interrogatories and Responses to Requests for Production of Documents, Set 1; Dated March 25, 2012.

⁴¹ *Local Competition Order* at ¶ 35.

1 In the absence of TELRIC rates or a negotiated rate,⁴² bill and keep is a recognized and
2 now default alternative.

3 **Q. IF MIDCONTINENT AND MISSOURI VALLEY ENTER INTO A BILL AND**
4 **KEEP ARRANGEMENT, HOW WILL THE TWO PROVIDERS RECOVER**
5 **THEIR COSTS OF TRANSPORT AND TERMINATION OF TRAFFIC?**

6 A. As noted by the FCC, providers will recover their costs "...from its own end users or
7 from explicit support mechanisms such as the federal universal support mechanism."⁴³
8 Further, the FCC refers to the efficient operation of the market under a bill and keep
9 arrangement, specifically addressing business plans that rely on intercarrier
10 compensation: "Under bill-and-keep, 'success in the marketplace will reflect a carrier's
11 ability to serve customers efficiently, rather than its ability to extract payments from other
12 carriers."⁴⁴

13 ***Missouri Valley's Proposed Reciprocal Compensation Rate is Exorbitantly***
14 ***High as Compared to Other Rates in North Dakota and Around the Country***

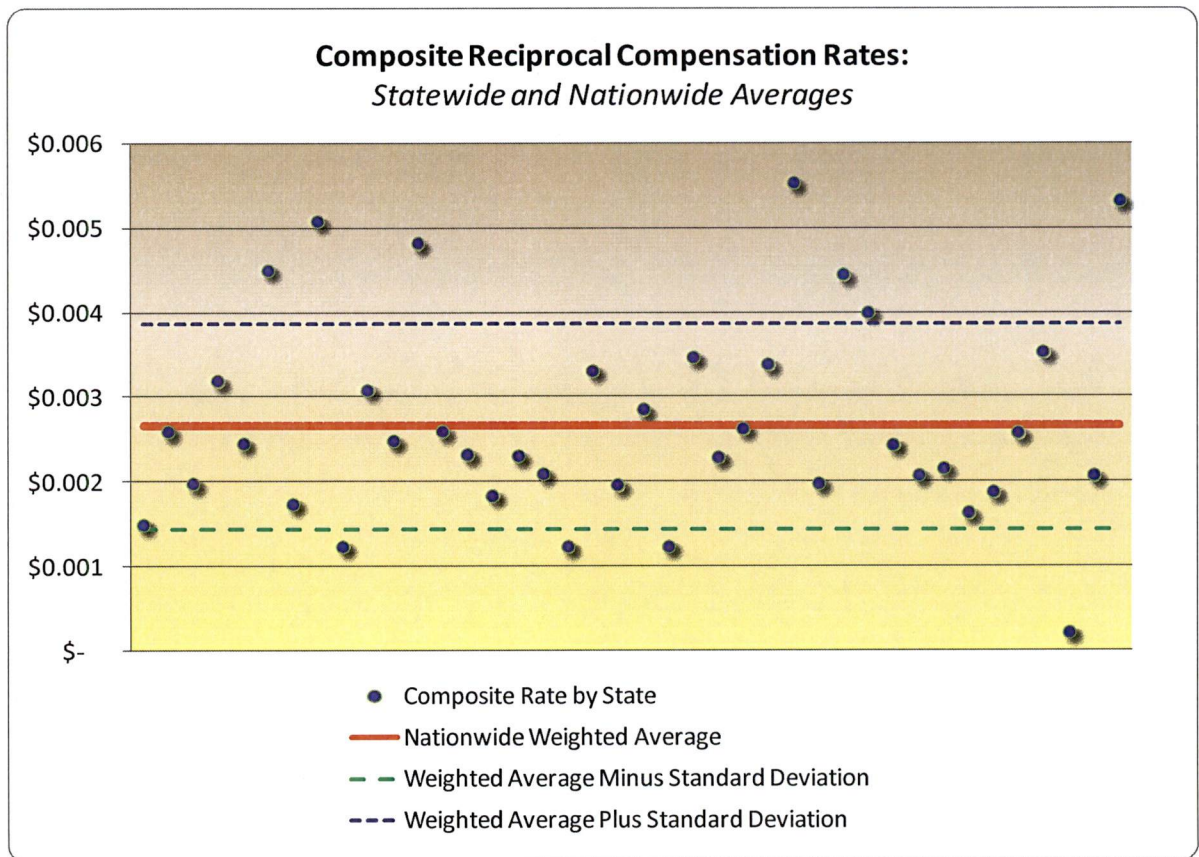
15 **Q. HOW DOES MISSOURI VALLEY'S PROPOSED RECIPROCAL**
16 **COMPENSATION RATE COMPARE TO OTHER RECIPROCAL**
17 **COMPENSATION RATES?**
18

⁴² Section 252(a)(1) of the Act specifically allows for the negotiation of terms and conditions regardless of the requirements of the Act.

⁴³ See *ICC/USF Transformation Order* at ¶ 775.

⁴⁴ *Id.* at ¶ 756.

1 A. The rate proposed by Missouri Valley (\$0.030249 per minute) is about fifteen times
2 higher than the average reciprocal compensation rates (\$0.002 per minute) on a national
3 basis. See the chart below for an overview of reciprocal compensation rates in
4 2008:⁴⁵



5
6 The data for the chart above is also provided in the table below.

⁴⁵ While these rates were in effect in 2008, one would not assume that they would increase over time. Instead, because telecommunications is a decreasing cost industry, and as more providers move to bill and keep, one would expect them to decrease. This study was done by QSI on behalf of Nuvox to support their comments to the FCC on intercarrier compensation (CC Docket No. 01-92; WC Docket No. 04-36; Dated October 2, 2008).

Composite Reciprocal Compensation Rate by ILEC*

State	ILEC	Composite Rate	State	ILEC	Composite Rate
AL	AT&T	\$ 0.0015	NC	AT&T	\$ 0.0012
AR	AT&T	\$ 0.0026	ND	Qwest	\$ 0.0035
AZ	Qwest	\$ 0.0020	NE	Qwest	\$ 0.0023
CA	AT&T	\$ 0.0035	NJ	Verizon	\$ 0.0026
CA	Verizon	\$ 0.0018	NM	Qwest	\$ 0.0034
CO	Qwest	\$ 0.0024	NV	AT&T	\$ 0.0055
DC	Verizon	\$ 0.0045	NY	Verizon	\$ 0.0020
DE	Verizon	\$ 0.0017	OH	AT&T	\$ 0.0042
FL	Embarq	\$ 0.0051	OH	Verizon	\$ 0.0053
GA	AT&T	\$ 0.0012	OK	AT&T	\$ 0.0040
IA	Qwest	\$ 0.0031	OR	Qwest	\$ 0.0022
ID	Qwest	\$ 0.0025	OR	Verizon	\$ 0.0031
IL	AT&T	\$ 0.0048	PA	Verizon	\$ 0.0021
IL	Verizon	\$ 0.0049	SC	AT&T	\$ 0.0022
KS	AT&T	\$ 0.0026	SD	Qwest	\$ 0.0016
KY	AT&T	\$ 0.0023	TN	AT&T	\$ 0.0019
MA	Verizon	\$ 0.0018	TX	AT&T	\$ 0.0021
MD	Verizon	\$ 0.0023	TX	Verizon	\$ 0.0050
MI	AT&T	\$ 0.0011	UT	Qwest	\$ 0.0035
MI	Verizon	\$ 0.0075	VA	Verizon	\$ 0.0002
MN	Qwest	\$ 0.0012	WA	Qwest	\$ 0.0020
MO	AT&T	\$ 0.0033	WA	Verizon	\$ 0.0023
MS	AT&T	\$ 0.0020	WY	Qwest	\$ 0.0053
MT	Qwest	\$ 0.0028			

* -- Composite Rate calculated by using the following assumptions: 75% traffic is tandem routed; 10 mile transport; 3 minute call duration.

As noted above, Qwest's (now CenturyLink) North Dakota rate for reciprocal compensation is \$0.0035 per minute. Missouri Valley's proposed rate is about nine times higher than the Qwest rate, although as shown below, these rates are not directly comparable.

Q. IS THE QWEST RATE THE APPROPRIATE RATE FOR MISSOURI VALLEY?

1 A. No. Bill and keep is the appropriate rate structure for the exchange of traffic between
2 Midcontinent and Missouri Valley. But if a rate was to be assigned for the exchange of
3 traffic, the Qwest rate is still not appropriate.

4 **Q. PLEASE EXPLAIN.**

5 A. The Qwest rate includes tandem switching. Missouri Valley does not have a tandem and
6 would not incur those additional costs, and, as such, could not charge those costs. Given
7 Qwest's tandem switching costs of about \$0.0015 per minute, a comparable reciprocal
8 compensation rate for Qwest in North Dakota is about \$0.002.⁴⁶ But again, Missouri
9 Valley is proposing a reciprocal compensation rate that is more than fifteen times higher
10 than the comparable Qwest rate in North Dakota. ($\$0.030249/\$0.002 = 15.13$)

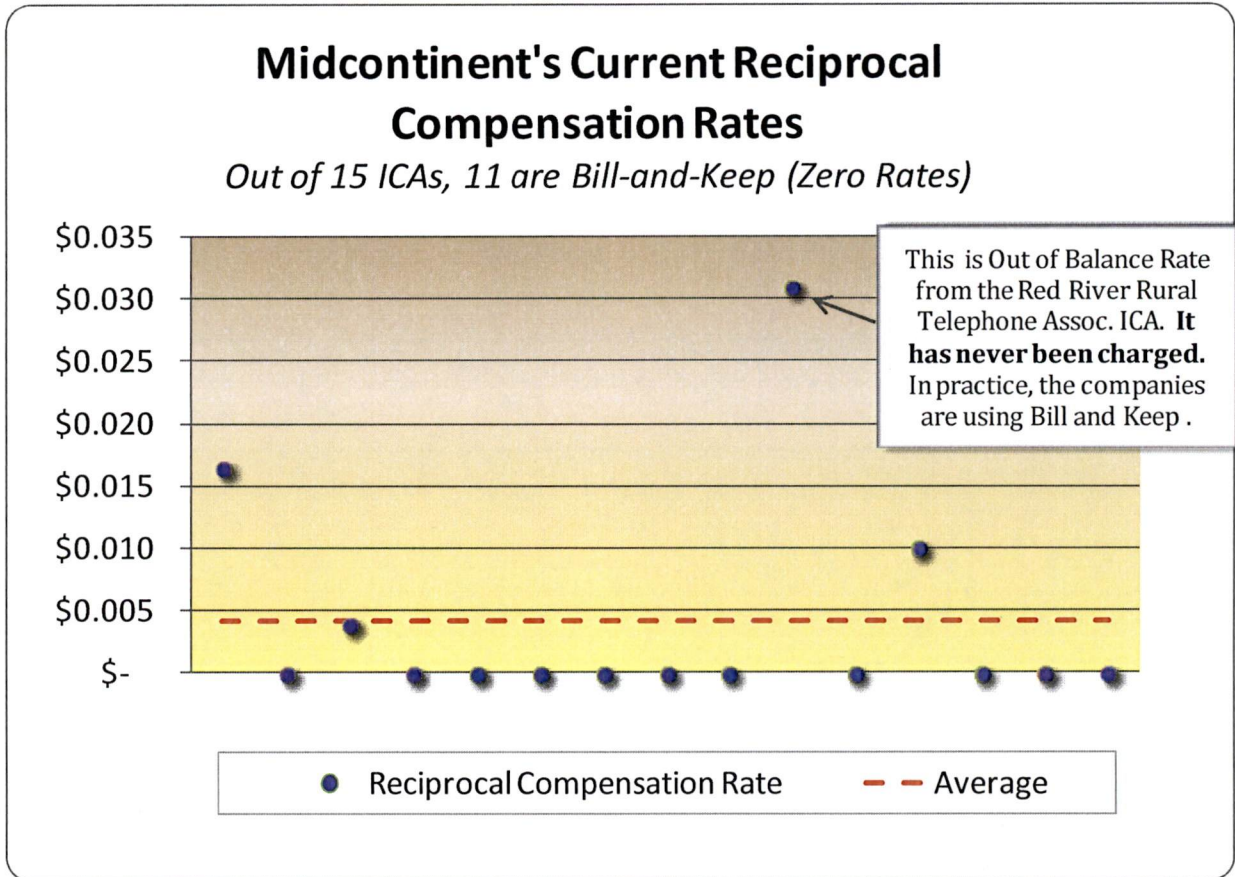
11 **Q. HOW DOES THE MISSOURI VALLEY PROPOSED RATE COMPARE TO THE**
12 **RECIPROCAL COMPENSATION RATES INCLUDED IN OTHER**
13 **MIDCONTINENT INTERCONNECTION AGREEMENTS IN NORTH**
14 **DAKOTA?**

15 A. The proposed Missouri Valley rate is higher than the reciprocal compensation rates in all
16 but one of Midcontinent's interconnection agreements. The vast majority of the
17 agreements use bill and keep for reciprocal compensation (11 of the 15 agreements), with
18 a zero rate.⁴⁷ The other agreements (Qwest/CenturyLink, Red River Rural Telephone

⁴⁶ Parenthetically, of the Qwest rates surveyed, only Wyoming had a higher reciprocal compensation rate than the Qwest rate in North Dakota.

⁴⁷ The agreements that utilize a bill and keep methodology include the following companies: CenturyTel, Consolidated Telecom Inc., Halstad Telephone Company, Inter-Community Telephone Company, LLC,

1 Association, Verizon Wireless, and BEK Communications) have rates, but most of them
2 are never applied because the traffic is in relative balance.⁴⁸ The following chart
3 provides a graphical presentation of the rates:



4 Polar Communications Mutual Aid Corporation, Polar Telecom, Wolverton Telephone Company, SRT Communications, Inc., United Telephone Mutual Aid Corporation, Turtle Mountain Communications, and North Dakota Telephone Company.

⁴⁸ Today the “balance of traffic” issue is no longer relevant. The FCC specifically rejected claims that, as a policy matter, bill and keep is only appropriate in the case of roughly balanced traffic. (FCC ICC/USF Transformation Order at ¶ 756.)

Midco's Current Reciprocal Compensation Rates

Company	Rate
BEK Communications Coop.	\$ 0.01650 *
CenturyTel	\$ -
Consolidated Telcom, Inc.	\$ -
Halstad Telephone Company	\$ -
Inter-Community Telephone Co, LLC	\$ -
NDTC (North Dakota Telephone	\$ -
Polar Communications Mutual Aid Corp.	\$ -
Polar Telcom	\$ -
Qwest/CenturyLink	\$ 0.00396
Red River Rural Telephone Association	\$ 0.03100 *
SRT Communications, Inc.	\$ -
Turtle Mountain Communications	\$ -
United Telephone Mutual Aid Corp.	\$ -
Verizon Wireless	\$ 0.01000
Wolverton Telephone Company	\$ -
Average	\$ 0.0041

* -- The rate is zero when traffic is close to balance.

The average reciprocal compensation rate for the fifteen companies above is about \$0.0041, which is dramatically lower than what Missouri Valley proposes.⁴⁹ In fact, Missouri Valley's proposed rate is more than seven times higher than the average rate shown above. ($\$0.030249/\$0.0041 = 7.38$)

While, for the reasons described elsewhere in this testimony, a bill and keep arrangement is the most appropriate approach to reciprocal compensation, the average rate of \$0.0041 is much more likely to be a reasonable approximation of Missouri Valley's incremental costs than the rate Missouri Valley has proposed. Incremental costs of transport and termination should not vary significantly from carrier to carrier, in large part because the

⁴⁹ Under the Red River agreement, reciprocal compensation is charged only when the traffic imbalance exceeds a 70-30 ratio.

1 call-specific cost of transport and termination is very low, and so there is no reason to
2 believe Missouri Valley's incremental costs would be higher than the average.

3 **Q. MIDCONTINENT'S RECIPROCAL COMPENSATION RATE WITH VERIZON**
4 **WIRELESS IS \$0.01 PER MINUTE WHILE THE MISSOURI VALLEY RATE**
5 **WITH VERIZON WIRELESS IS \$0.030249. CAN YOU EXPLAIN THE**
6 **DIFFERENCE?**

7 A. No. As noted above, Midcontinent sought justification for the proposed reciprocal
8 compensation rate, but Missouri Valley claimed the rate was not based on any "studies,
9 reports and other documents that support the rate for reciprocal compensation...."⁵⁰

10 **Q. HAS THE FCC CHANGED RECIPROCAL COMPENSATION FOR NON-**
11 **ACCESS TRAFFIC EXCHANGED BETWEEN LECS AND COMMERCIAL**
12 **MOBILE RADIO SERVICE ("CMRS")⁵¹ PROVIDERS?**

13 A. Yes. The FCC has adopted bill and keep as the default intercarrier compensation
14 methodology for non-access traffic between LECs and CMRS providers under section
15 20.11 and Part 51 of its rules.⁵²

⁵⁰ See Missouri Valley Supplemental Response to Midcontinent Request for Production No. 5, dated March 25, 2012.

⁵¹ CMRS providers are commonly known as wireless or cellular providers. Both Verizon Wireless and Sagebrush Cellular are CMRS providers under the FCC rules and definitions. See, also, 47 CFR § 20.3.

⁵² See ICC/USF Transformation Order at ¶ 988.

1 **Q. IS THERE A TRANSITION PERIOD FOR THE ELIMINATION OF PER**
2 **MINUTE RECIPROCAL COMPENSATION RATES BETWEEN LECS AND**
3 **CMRS PROVIDERS?**

4 A. No. The FCC determined that this change should apply immediately, to address traffic
5 stimulation and other market disruptions.⁵³

6 **Q. SINCE RECIPROCAL COMPENSATION HAS CHANGED TO BILL AND KEEP**
7 **BETWEEN LECS AND CMRS PROVIDERS, DOES THE MISSOURI VALLEY**
8 **RATE OF \$0.030249 OR THE MIDCONTINENT RATE OF \$0.01 HAVE ANY**
9 **RELEVANCE TO THE CURRENT DEBATE?**

10 A. No. The important point is that reciprocal compensation is going to bill and keep for all
11 intercarrier compensation over time and for CMRS providers immediately. The correct
12 reciprocal compensation methodology for the Missouri Valley/Midcontinent agreement is
13 bill and keep.

14 **Q. PLEASE SUMMARIZE WHY MISSOURI VALLEY'S PROPOSED**
15 **RECIPROCAL COMPENSATION RATE SHOULD NOT BE APPROVED.**

16 A. Missouri Valley's proposed reciprocal compensation rate should not be approved for the
17 following reasons: (1) Missouri Valley has provided no support (cost or otherwise) for

⁵³ *Id.* at ¶ 995

1 its proposed rates, and reciprocal compensation rates must be TELRIC-based, negotiated
2 or bill and keep; (2) the proposed rates are exorbitant compared to other reciprocal
3 compensation rates and will create incentives for call blocking, traffic pumping, or other
4 distortions in the market; and (3) any rate, and especially Missouri Valley's proposed
5 rate, is inconsistent with the FCC's national goal of moving all intercarrier compensation,
6 including reciprocal compensation, to a bill and keep system over time.

7 ***Midcontinent's Proposal for Reciprocal Compensation based on Bill and***
8 ***Keep Should be Adopted***
9

10 **Q. EARLIER YOU STATED THAT MIDCONTINENT'S PROPOSAL FOR**
11 **RECIPROCAL COMPENSATION WAS ADMINISTRATIVELY SIMPLE,**
12 **CONSISTENT WITH OTHER NORTH DAKOTA RECIPROCAL**
13 **COMPENSATION AGREEMENTS, CONSISTENT WITH THE FCC RULES,**
14 **AND CONSISTENT WITH THE FCC'S GOAL FOR RECIPROCAL**
15 **COMPENSATION. YOU ALSO NOTED THAT BILL AND KEEP ELIMINATES**
16 **INCENTIVES FOR RATE ARBITRAGE THAT HAVE BEEN AN ISSUE IN THE**
17 **INDUSTRY OVER TIME. PLEASE ADDRESS EACH OF THESE POINTS.**

18 A. Bill and keep is administratively simple because there is no need to generate, exchange,
19 review, perhaps dispute and ultimately pay reciprocal compensation bills. Also, because
20 bill and keep doesn't require billing and payment, there is no need to monitor or measure
21 traffic – instead the traffic simply flows between the two LECs. This is much like the

1 way the old AT&T (the Bell System) treated traffic between the independent telephone
2 companies and the Bell companies prior to divestiture in the early 1980s.

3 **Q. SO BILL AND KEEP HAS BEEN USED FOR MANY YEARS?**

4 A. Yes. It was used for decades prior to the break-up of the Bell System, and it was
5 specifically identified in the 1996 Telecom Act for reciprocal compensation, and in the
6 FCC orders implementing the Act.⁵⁴ The use of bill and keep for reciprocal
7 compensation is very common and very efficient.

8 **Q. YOU STATE THAT BILL AND KEEP IS A COMMON FORM OF**
9 **RECIPROCAL COMPENSATION IN NORTH DAKOTA. PLEASE EXPLAIN.**

10 A. Midcontinent has interconnection agreements with other providers in North Dakota, and
11 as noted above, most of those agreements (11 out of 15 agreements) utilize bill and keep
12 provisions for reciprocal compensation.

13 **Q. TO THE BEST OF YOUR KNOWLEDGE, HAVE ANY OF THE 11 PROVIDERS**
14 **WITH WHICH MIDCONTINENT IS EXCHANGING TRAFFIC ON A BILL**
15 **AND KEEP BASIS BEEN HARMED IN ANY WAY BY THE USE OF THAT**
16 **METHODOLOGY?**

17 A. No.

⁵⁴ See 1996 Telecom Act at Section 252(d)(2)(B)(i).

1 **Q. EARLIER YOU SAID THAT BILL AND KEEP WAS CONSISTENT WITH THE**
2 **FCC RULES FOR RECIPROCAL COMPENSATION. WERE YOU**
3 **REFERRING TO 47 CFR § 51.705?**

4 A. Yes. I was also referring generally to 47 CFR §51.713.

5 **Q. DOESN'T 47 CFR § 51.713 NOTE THAT STATE COMMISSIONS MAY IMPOSE**
6 **BILL AND KEEP IF "...THE AMOUNT OF TELECOMMUNICATIONS**
7 **TRAFFIC FROM ONE NETWORK TO THE OTHER IS ROUGHLY**
8 **BALANCED...?"**

9 A. That constraint was found in the FCC's rules in the past. In theory, that test was to make
10 sure that no one provider was inappropriately benefitting from excessive or one-sided
11 reciprocal compensation. The FCC has now eliminated the balance of traffic requirement
12 for the use of bill and keep.⁵⁵

13 **Q. ARE YOU SUGGESTING THAT THE "ROUGH" BALANCE OF TRAFFIC IS**
14 **NO LONGER NEEDED TO JUSTIFY THE USE OF BILL AND KEEP FOR**
15 **RECIPROCAL COMPENSATION?**

16 A. Yes. As the FCC noted, "...nothing in section 252(d)(2) requires that traffic be balanced
17 before bill-and-keep may be imposed on carriers."⁵⁶ The FCC has now specifically
18 rejected that "roughly balanced" restriction as a matter of policy. As noted at paragraph

⁵⁵ The FCC has repealed section 51.713 of its rules. See, *ICC/USF Transformation Order* at ¶ 759.

⁵⁶ See *ICC/USF Transformation Order* at ¶ 774 FN 1405; see, also ¶¶ 755-759 for a discussion of why bill and keep is appropriate even if traffic is imbalanced.

1 755 of its *ICC/USF Transformation Order*, “bill and keep is appropriate even if traffic is
2 imbalanced.”

3 The text of the revised 47 CFR § 51.713 reads as follows:

4 Bill-and-keep arrangements are those in which carriers exchanging
5 telecommunications traffic do not charge each other for specific transport
6 and/or termination functions or services.

7 As one can see, the FCC has eliminated all references to the balance of traffic as a
8 requirement for the use of bill and keep.

9 **Q. HAS THE FCC ALSO IDENTIFIED BILL AND KEEP AS THE DEFAULT**
10 **FRAMEWORK AND END STATE FOR ALL INTERCARRIER**
11 **COMPENSATION TRAFFIC?**

12 A. Yes. The FCC stated that “Consistent with the National Broadband Plan’s
13 recommendation to phase out regulated per-minute intercarrier compensation charges, in
14 this section we adopt bill-and-keep as the default methodology for all intercarrier
15 compensation traffic.”⁵⁷ The FCC also noted that “A bill-and-keep methodology also
16 imposes fewer regulatory burdens and reduces arbitrage and competitive distortions
17 inherent in the current system, eliminating carriers’ ability to shift network costs to
18 competitors and their customers.”⁵⁸

⁵⁷ See *USF/ICC Transformation Order* at ¶ 736.

⁵⁸ *Id.* at ¶ 738.

1 **Q. IF THERE ARE NO PAYMENTS BETWEEN THE TWO PROVIDERS, HOW**
2 **WILL MIDCONTINENT AND MISSOURI VALLEY RECOVER THEIR COSTS**
3 **OF TRANSPORT AND TERMINATION?**

4 A. As noted above, the FCC has found that providers will recover their costs from their end
5 users.⁵⁹

6 **Q. IF WE ASSUME TRAFFIC IS NOT IN BALANCE, IS IT CORRECT THAT ONE**
7 **CARRIER MAY SUFFER FROM HIGH COSTS OF TRANSPORT AND**
8 **TERMINATION BASED ON THE TRAFFIC FROM THE OTHER CARRIER?**

9 A. No. This question assumes that there is a high cost of transport and termination. The
10 FCC has concluded, "...that the incremental cost of call termination is very nearly
11 zero..." The FCC goes on to state that the low or zero cost, "...coupled with the
12 difficulty of appropriately setting an efficient, positive intercarrier compensation charge,
13 further supports our adoption of bill-and-keep."⁶⁰ Even if the costs are more than zero,
14 the Act "...does not entitle each carrier to recover those costs from another carrier, so
15 long as it can recover those costs from its own end users and explicit universal service
16 support where necessary."⁶¹ The FCC's rules do not prevent cost recovery (assuming
17 there are costs), but the rules alter the source of the cost recovery.

⁵⁹ *Id.* at ¶ 775.

⁶⁰ *Id.* at ¶¶ 752 and 753.

⁶¹ *Id.* at ¶ 757.

1 **Q. ARE THERE OTHER FACTORS THAT OUGHT TO BE CONSIDERED IN**
2 **SETTING THE RECIPROCAL COMPENSATION RATE?**

3 A. Yes. As described below, the FCC has adopted rules that eventually will reduce
4 reciprocal compensation rates to bill and keep. That means that neither party will be able
5 to charge the kinds of rates proposed by Missouri Valley in the long term.

6 **Q. IS THERE ANOTHER AREA OF DISPUTE BETWEEN MIDCONTINENT AND**
7 **MISSOURI VALLEY WITH RESPECT TO RECIPROCAL COMPENSATION?**

8 A. Yes. Assuming a non-zero reciprocal compensation rate applies, Missouri Valley would
9 have the parties exchange bills unless traffic is within a 55/45 percent ratio for three
10 consecutive months. Once bill and keep is in place, if traffic is out of balance (outside
11 55/45), for six consecutive months, then bills would be rendered and paid. While
12 Midcontinent argues for bill and keep, if a non-zero rate is determined and range or collar
13 is to be applied, the collar should be at least 60/40 or some higher ratio as determined
14 over three consecutive months. Even a 60/40 collar may result in changing from bill and
15 keep to billing and vice versa over time. And, as noted herein, having to monitor and
16 track traffic is a burden and may result in additional conflicts when reviewing the traffic
17 data. These unnecessary costs of measurement, billing, and disputes takes money that
18 could otherwise be used to serve customers, develop new services, or reduce prices.

19 **Q. PLEASE SUMMARIZE WHY THE COMMISSION SHOULD ADOPT BILL AND**
20 **KEEP FOR RECIPROCAL COMPENSATION.**

1 A. Bill and keep is appropriate for the following reasons: (1) it is consistent with the
2 national goal of moving to bill and keep as the default mechanism for all intercarrier
3 compensation and is the rate that will apply to all carriers over time; (2) it is consistent
4 with the Act and the FCC's rules for reciprocal compensation; (3) it is a common
5 mechanism for reciprocal compensation in North Dakota and around the country; and, (4)
6 it imposes fewer regulatory burdens and reduces arbitrage and competitive distortions.

7 ***Transition of Resale Customers to Facilities-Based Platform Needs***
8 ***Certainty***

9 **Q. PLEASE EXPLAIN THE DISPUTE BETWEEN THE PARTIES ON THE**
10 **TRANSITION OF CUSTOMERS FROM RESALE TO THE FACILITIES OF**
11 **MIDCONTINENT.**

12 A. Both parties agree to a one year transition period that would move Midcontinent resale
13 customers to Midcontinent's facilities. Missouri Valley, however, has not agreed to a
14 specific number of customers to be switched per week or per month. Midcontinent needs
15 some assurance that the transition will occur quickly and efficiently over time and not at
16 the last minute during the last month. Specifically, Midcontinent proposes that an equal
17 number of customers be switched each week until the transition is complete. Not only
18 will this provide certainty for the providers, but it will allow Midcontinent to manage the
19 expectations of its customers during the transition period. Midcontinent's proposal
20 should be adopted as it provides guard rails for the transition process between
21 Midcontinent and Missouri Valley and allows consumers some confidence in the timing
22 as well.

1 **Q. IS THERE A DISAGREEMENT ON HOW TO CALCULATE AND APPLY THE**
2 **MIDCONTINENT PROPOSED ACCESS TRANSITION MECHANISM?**

3 A. Yes. As discussed more completely herein, there is already a revenue replacement
4 mechanism that the FCC has put into place that was announced after Midcontinent made
5 its switched access replacement proposal. Nevertheless, if Midcontinent's additional
6 access charge replacement mechanism is put into place, it should be done efficiently and
7 with as little administrative burden as possible.

8 **Q. WHAT IS MIDCONTINENT PROPOSING FOR THE REVENUE**
9 **REPLACEMENT MECHANISM?**

10 A. Midcontinent recommends that a calculation be made identifying the per customer
11 monthly average switched access charges for Missouri Valley. That calculation would be
12 based on a historical review for the last six months. 75 percent of that calculated amount
13 would be paid to Missouri Valley each month for six months from the date of conversion
14 from resale to Midcontinent facilities. For instance, if 75 percent of Missouri Valley's
15 average switched access revenue for a customer in Williston is \$5 per month (based on an
16 average of all Missouri Valley customers for the last six months), then Midcontinent
17 would pay Missouri Valley \$5 per month for each customer that converts from resale to a
18 facilities-based connection with Midcontinent. That \$5 per month payment would
19 continue for six months for each converted customer. See the example below for how
20 this mechanism might work assuming 100 customers are converted each month over a
21 twelve month period.

Example of Transitional Payments to Missouri Valley per Midcontinent's Proposal																		
	Nbr of Cust Convs																	
		Mo 1	Mo 2	Mo 3	Mo 4	Mo 5	Mo 6	Mo 7	Mo 8	Mo 9	Mo 10	Mo 11	Mo 12	Mo 13	Mo 14	Mo 15	Mo 16	Mo 17
Mo 1	100	500	500	500	500	500	500											
Mo 2	100		500	500	500	500	500	500										
Mo 3	100			500	500	500	500	500	500									
Mo 4	100				500	500	500	500	500	500								
Mo 5	100					500	500	500	500	500	500							
Mo 6	100						500	500	500	500	500	500						
Mo 7	100							500	500	500	500	500	500					
Mo 8	100								500	500	500	500	500	500				
Mo 9	100									500	500	500	500	500	500			
Mo 10	100										500	500	500	500	500	500		
Mo 11	100											500	500	500	500	500	500	
Mo 12	100												500	500	500	500	500	500
Pmnts to MVC	\$ 500	\$ 1,000	\$ 1,500	\$ 2,000	\$ 2,500	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 2,500	\$ 2,000	\$ 1,500	\$ 1,000	\$ 500

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As one can see, the Midcontinent proposal is relatively easy to understand and implement.

Q. HOW DOES MISSOURI VALLEY'S PROPOSAL DIFFER FROM THAT OF MIDCONTINENT?

A. Missouri Valley does not agree to any set number of conversions per week or per month. Further, Missouri Valley recommends calculating each customer's actual average switched access revenue and then multiplying that amount by 75 percent to determine that individual customer's payment for the six month transition period. With no set number of conversions to occur each month, and the requirement to calculate the actual average access revenues for each customer converted, Missouri Valley's proposal would be extremely difficult to implement.

Q. WHAT IS YOUR RECOMMENDATION ON THIS DISPUTE?

1 A. I recommend that the Commission adopt Midcontinent's proposal as it is administratively
2 efficient, should result in almost identical additional revenues for Missouri Valley, and
3 provides certainty for the providers and for customers impacted by the conversion.

4 **IX. THE FCC USF/ICC TRANSFORMATION ORDER TRANSITION MECHANISM**
5 **IN COMBINATION WITH MIDCONTINENT'S ACCESS REPLACEMENT**
6 **MECHANISM MITIGATES AGAINST ANY LOSSES OF INTERCARRIER**
7 **COMPENSATION REVENUES FOR MISSOURI VALLEY**

8 **Q. WILL THE FCC USF/ICC TRANSFORMATION ORDER⁶² HAVE ANY IMPACT**
9 **ON MISSOURI VALLEY ON A GOING-FORWARD BASIS?**

10 A. Yes. The main impact of the FCC's *USF/ICC Transformation Order* as it relates to this
11 case is that to a large extent, Missouri Valley's losses in intercarrier revenues associated
12 with the migration of Midcontinent's resale customers to a facilities basis will be
13 mitigated through the access revenue recovery mechanism, or ARRM.

14 **Q. PLEASE EXPLAIN THE BACKGROUND OF THE ACCESS REVENUE**
15 **RECOVERY MECHANISM CREATED BY THE FCC USF/ICC**
16 **TRANSFORMATION ORDER.**

⁶² See also two clarification orders in the same dockets, dated December 23, 2012 (which postponed to July 1, 2012 the effective date of the rule that reduced to zero reciprocal compensation rate for non-access traffic exchanged with wireless carriers) (*USF/ICC December 23, 2011 Order*) and February 3, 2012 (which corrected rule 47 CFR ¶51.917(d) that set the method for calculating eligible recovery discussed below) (*USF/ICC February 3, 2012 Order*).

1 A. The *USF/ICC Transformation Order* adopted new rules that contain a comprehensive
2 reform of the existing intercarrier compensation system, with an end goal of moving to a
3 uniform national bill-and-keep system.⁶³ As part of the reform, the Order set a multi-year
4 transition path during which interstate and intrastate terminating access, as well as
5 reciprocal compensation rates are reduced according to a prescribed schedule.⁶⁴ For rural
6 LECs the transition period is nine years (starting on July 1, 2012 and ending on July 1,
7 2020). Before that, on the effective date of the Order (December 29, 2011), all interstate
8 access, terminating intrastate access and reciprocal compensation rates are capped at the
9 then-existing levels.⁶⁵

10 **Q. HOW ARE RATES REDUCED OVER TIME?**

11 A. Rate reductions start on July 1, 2012 when reciprocal compensation rates for wireless
12 traffic go to zero, and terminating intrastate access rates, if above the rural LEC's
13 interstate rates, are reduced by 50 percent of the differential between the rate and the
14 provider's interstate access rate. By July 1, 2013 all terminating intrastate access rates
15 are reduced to parity with interstate rates. On July 1, 2014, reductions in interstate end
16 office terminating access rates begin. The first reduction in the terminating switched end
17 office rate is one-third of the differential between the end office rate and \$0.005. On July

⁶³ *USF/ICC Transformation Order*, ¶ 34.

⁶⁴ *USF/ICC Transformation Order*, ¶ 801 and 47 CFR §51.705 (reciprocal compensation) and 47 CFR §51.909 (rural LEC access rates). See also *USF/ICC December 23, 2011 Order* that changed the effective date of the rule 47 CFR §51.705(a), which set wireless reciprocal compensation rates to be equal zero (bill-and-keep).

⁶⁵ *Id.*

1, 2015, the terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to \$0.005. Reductions in terminating end office and reciprocal compensation rates continue every year until they are completely eliminated. The terminating end office and reciprocal compensation rates are capped at the following levels:

July 1, 2016 \$0.005 per minute

July 1, 2019 \$0.0007 per minute

July 1, 2020 zero (bill-and-keep).⁶⁶

Q. DOES THE ORDER PROVIDE A TRANSITIONAL MECHANISM TO OFFSET REVENUE LOSSES ASSOCIATED WITH THE REDUCTIONS FOR RURAL LECS?

A. Yes. To help rural LECs with the anticipated losses in intercarrier compensation revenue caused by the above described reform, the *USF/ICC Transformation Order* created an access revenue recovery mechanism (“ARRM”)⁶⁷ that will compensate incumbent carriers for much of the future losses in intercarrier compensation revenue.

Q. HOW DOES THE ARRM FUNCTION?

⁶⁶ *Id.*

⁶⁷ *USF/ICC Transformation Order*, ¶¶ 850-851 and 47 CFR §51.917.

1 A. The specific recovery method includes two components – 1) the new end user charge
2 Access Recovery Charge (“ARC”), and 2) a subsidy through the newly created Connect
3 America Fund (“CAF”).⁶⁸ The CAF subsidy is provided only if the ARC revenue does
4 not fully offset the amount of lost revenue that is eligible for recovery (referred to as
5 eligible recovery).⁶⁹ This mechanism provides protection for rural LECs from *any kind*
6 *of losses* in intercarrier compensation revenue – including not only losses due to access
7 reductions mandated by the *USF/ICC Transformation Order*, but also losses in access
8 minutes and end user customers.

9 **Q. HOW IS “ELIGIBLE RECOVERY” OF INTERCARRIER COMPENSATION**
10 **REVENUE DETERMINED UNDER THE ARRM?**

11 A. For a rural LEC such as Missouri Valley, the total amount of revenue eligible for
12 recovery in each year is equal to the difference between its Base Period Revenue (defined
13 below), subject to a five (5) percent annual reduction, and actual current revenues from
14 interstate switched access, terminating intrastate switched access and net reciprocal
15 compensation in that year (based on actual then-current rates and traffic volumes).⁷⁰ The
16 Base Period Revenue is equal to the rural LEC’s 2011 interstate switched access

⁶⁸ *USF/ICC Transformation Order*, ¶¶ 850-853.

⁶⁹ *USF/ICC Transformation Order*, ¶853 and 47 CFR §51.917.

⁷⁰ 47 CFR §51.917 (d).

1 revenue⁷¹ plus terminating intrastate switched access revenue and net reciprocal
2 compensation. In other words, Missouri Valley's payments will be based on its access
3 revenues before the interconnection agreement goes into effect and before any customers
4 are migrated to Midcontinent.

5 **Q. THIS APPEARS TO BE A MAKE-WHOLE PROVISION FOR RURAL LECs. IS**
6 **THAT HOW YOU SEE IT?**

7 A. Yes, although it doesn't replace every lost dollar of revenue. In essence, this mechanism
8 ensures that a rural LEC will receive on a going-forward basis a certain percent of the
9 Base Period Revenue. Therefore, I refer to revenue from these services as "protected"
10 revenues.

11 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE 5 PERCENT ANNUAL**
12 **REDUCTION COMPONENT OF THE CALCULATION.**

13 A. The 5 percent annual reduction to Base Period Revenue used in the calculation of the
14 eligible recovery amount means that in 2012, the baseline for recovery is 95% of the Base
15 Period Revenue. In each following year, the Base Period Revenue is reduced by five
16 percent. If the amount of eligible recovery as defined above is greater than zero, the rural
17 LEC will receive the offsetting revenue through ARC and, if necessary, CAF.

⁷¹ *Id.* More generally, the first component of the Base Period Revenue is the interstate switched access revenue requirement, which is recovered today through interstate switched access rates and Local Switching Support ("LSS") (*USF/ICC Transformation Order*, ¶851), but it is my understanding that Missouri Valley does not receive LSS for the exchange in question. Therefore, to simplify the discussion, I ignore the LSS component. If Missouri Valley received LSS today for the Williston exchange, the amount of its Base Period ("protected") Revenue would increase by the amount of the LSS disbursements.

1 **Q. PLEASE SUMMARIZE THE IMPACT OF THE TRANSITION MECHANISM**
2 **FOR RURAL LECS LIKE MISSOURI VALLEY.**

3 A. To summarize, intercarrier compensation revenue from interstate switched access,
4 intrastate terminating switched access and reciprocal compensation are “protected” in the
5 sense that starting in 2012, the rural LEC is guaranteed to receive a major portion of its
6 2011 revenues from these services through either intercarrier compensation charges, and
7 to the extent necessary, through ARC and CAF. For example, in 2012 a rural LEC is
8 guaranteed to receive 95% of its Base Period intercarrier compensation Revenue; in 2013
9 it is guaranteed to receive 90% of its Base Period Revenue, etc.

10 **Q. CAN YOU PROVIDE A NUMERICAL EXAMPLE OF THE MECHANISM?**

11 A. Yes. The following hypothetical example (Table 1) illustrates this mechanism. This
12 example assumes that no changes take place except for the implementation of the FCC
13 USF/ICC reform. In other words, it assumes that line counts and the per-line minutes of
14 use stay the same over time, while intercarrier compensation rates decrease over time.
15 While this example is based on hypothetical assumptions about the level of Baseline
16 Revenue, Line Count and the per Line Intercarrier Compensation (“ICC”) Revenue, the
17 chosen assumed values are meant to capture my view about the magnitude of measures in
18 question. For example, for the line count I assume 10,000 lines, which is a number in the
19 neighborhood of Missouri Valley’s actual line counts in the Williston exchange. The
20 time horizon in this example is three years (ending in 2014), which is long enough to
21 show the pattern of changes but short enough to fit on a page.

Table 1.

Illustration of the FCC USF/ICC Access Revenue Recovery Mechanism

#	Measure	Note	12/29/11	7/1/12	7/1/13	7/1/14
1	Baseline for Recovery: Base Period Revenue Adjusted 5% Down Annually	<i>2011 Amount Assumed; decreases 5% annually</i>	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688
2	Total Missouri Valley Lines	<i>Assumed</i>	10,000	10,000	10,000	10,000
3	Per Line ICC Revenue from "Protected" Services	<i>Decreases annually as access rates decrease per FCC Order; assumed levels</i>	\$ 50.00	\$ 45.42	\$ 44.28	\$ 39.15
4	ICC Revenue from "Protected" Services	<i>Calculated as Line 2 (Total MV Lines) times Line 3 (Per Line ICC Revenue from "Protected" Services)</i>	\$ 500,000	\$ 454,215	\$ 442,756	\$ 391,519
5	Eligible Recovery through ARC/CAF	<i>Calculated as Line 1 (Baseline for Recovery) Minus Line 4 (ICC Revenue from "Protected" Services)</i>	NA	\$ 20,785	\$ 8,494	\$ 37,169
6	ICC Revenue from "Protected" Services and ARC/CAF	<i>Calculated as Line 4 (ICC Revenue from "Protected" Services) plus Line 5 (Eligible Recovery through ARC/CAF)</i>	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688

As shown in Table 1 above, the Baseline for Recovery (line 1) is the assumed 2011 revenue for "protected" services (interstate switched access, intrastate originating access and reciprocal compensation) – reduced annually by 5%. In 2011 the Baseline for Recovery is \$500,000, and by 2014 this Baseline is reduced to \$428,688. The Per Line Revenue for the same services (line 3) goes down annually (from \$50.00 in 2011 to \$39.15 in 2014) because of the FCC-mandated reductions in access and reciprocal compensation rates. Total actual Revenue from the ICC "protected" services (line 4) is equal to the Per Line Revenue times Total Lines. This revenue decreases each year (from \$500,000 in 2011 to \$391,519 in 2014) because of the decrease in the Per Line Revenue. The Baseline for Recovery (line 1) is greater than actual Revenue from the "protected" services in each year starting in 2012. The difference (line 5) is the additional recovery

1 provided to the rural LEC through the ARC and CAF. As a result, the total Revenue
 2 after ARC/CAF moneys are factored in (line 6), is the same as the Baseline for Recovery
 3 (line 1).

4 **Q. REFERRING TO THE HYPOTHETICAL EXAMPLE DEPICTED IN TABLE 1:**
 5 **HOW WOULD LINE LOSSES AFFECT MISSOURI VALLEY'S TOTAL ICC**
 6 **COMPENSATION?**

7 A. The impact of Missouri Valley's line losses on its total intercarrier compensation under
 8 the new regime is illustrated in Table 2 below. The only difference in assumptions in this
 9 table compared to Table 1 is that line counts are assumed to decrease each year.⁷²

10 Table 2.

Illustration of the FCC USF/ICC Access Revenue Recovery Mechanism -- With Line Losses

#	Measure	Note	12/29/11	7/1/12	7/1/13	7/1/14
1	Baseline for Recovery: Base Period Revenue Adjusted 5% Down Annually	<i>2011 Amount Assumed; decreases 5% annually</i>	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688
2	Total Missouri Valley Lines	<i>Assumed to decrease annually due to competitive losses</i>	10,000	9,500	9,000	8,500
3	Per Line ICC Revenue from "Protected" Services	<i>Decreases annually as access rates decrease per FCC Order; assumed levels</i>	\$ 50.00	\$ 45.42	\$ 44.28	\$ 39.15
4	ICC Revenue from "Protected" Services	<i>Calculated as Line 2 (Total MV Lines) times Line 3 (Per Line ICC Revenue from "Protected" Services)</i>	\$ 500,000	\$ 431,504	\$ 398,481	\$ 332,791
5	Eligible Recovery through ARC/CAF	<i>Calculated as Line 1 (Baseline for Recovery) Minus Line 4 (ICC Revenue from "Protected" Services)</i>	NA	\$ 43,496	\$ 52,769	\$ 95,896
6	ICC Revenue from "Protected" Services and ARC/CAF	<i>Calculated as Line 4 (ICC Revenue from "Protected" Services) plus Line 5 (Eligible Recovery through ARC/CAF)</i>	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688

11 ⁷² These assumed line losses are illustrative only and do not reflect expectations or analysis.

1 As shown in Table 2, if line counts decrease over time (line 2), the total ICC Revenue
2 from Protected Services (line 4) decrease not only because of the reduction in access rates
3 (reflected in line 3), but also from the reduction in the number of lines. The ARRM
4 permits full recovery of the Baseline revenue (line 1 Baseline for Recovery), and
5 therefore, the sum of the intercarrier compensation revenue and the ARC/CAF monies
6 (line 6) is equal to the Baseline for Recovery.

7 **Q. SO THE IMPACT OF COMPETITIVE ENTRY, ASSUMING IT RESULTS IN**
8 **LINE LOSSES, DOES NOT DIRECTLY IMPACT THE RURAL LEC'S ACCESS**
9 **OR OTHER INTERCARRIER COMPENSATION REVENUES?**

10 A. Correct. Note that the Baseline for Recovery (line 1) in this scenario is the same as the
11 Baseline for Recovery in the first scenario ("no competitive entry") depicted in Table 1.
12 In both cases this baseline is equal to the historical 2011 revenue (reduced by five percent
13 each year). Since the Baseline is the same, the total revenue (line 6) is also the same. In
14 other words, whether Missouri Valley experiences line losses from competitive entry,
15 consumers cutting the cord, elimination of "second lines" with the purchase of DSL, or
16 no line losses, it will collect in total the same amount of revenue (the sum of intercarrier
17 compensation for "protected" services and ARC/CAF).

18 **Q. CAN YOU ILLUSTRATE THIS POINT WITH ANOTHER CHART?**

19 A. Yes. This point is further illustrated in Table 3 below, which compares the data in Tables
20 1 and 2 line-by-line. Rows labeled "No Entry" are values from Table 1, while rows
21 labeled "Line Losses" are values from Table 2.

Table 3.

The Impact of the FCC USF/ICC Access Revenue Recovery Mechanism: No Entry Scenario Compared to the Scenario with Line Losses

#	Measure	Scenario	12/29/11	7/1/12	7/1/13	7/1/14
1	Baseline for Recovery: Base Period Revenue Adjusted 5% Down Annually	No Entry	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688
		Line Losses	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688
2	Total Missouri Valley Lines	No Entry	10,000	10,000	10,000	10,000
		Line Losses	10,000	9,500	9,000	8,500
3	Per Line ICC Revenue from "Protected" Services	No Entry	\$ 50.00	\$ 45.42	\$ 44.28	\$ 39.15
		Line Losses	\$ 50.00	\$ 45.42	\$ 44.28	\$ 39.15
4	ICC Revenue from "Protected" Services	No Entry	\$ 500,000	\$ 454,215	\$ 442,756	\$ 391,519
		Line Losses	\$ 500,000	\$ 431,504	\$ 398,481	\$ 332,791
5	Eligible Recovery through ARC/CAF	No Entry	NA	\$ 20,785	\$ 8,494	\$ 37,169
		Line Losses	NA	\$ 43,496	\$ 52,769	\$ 95,896
6	ICC Revenue from "Protected" Services and ARC/CAF	No Entry	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688
		Line Losses	\$ 500,000	\$ 475,000	\$ 451,250	\$ 428,688

As shown in Table 3, the difference between the two scenarios is that line losses result in a loss of intercarrier compensation revenue (line 4 amounts for the scenario "Line Losses" are less than amounts for the scenario "No Entry"). Line losses also cause an offsetting increase in revenue recovery through ARC/CAF (line 5 amounts for the scenario "Line Losses" are greater than amounts for the scenario "No Entry"). In the end, the sum of intercarrier compensation revenue from "protected" services and ARC/CAF (line 6) is the same under the scenarios of "no entry" and "competitive line losses."

1 **Q. ARE ALL TYPES OF INTERCARRIER COMPENSATION REVENUE**
2 **“PROTECTED” BY THE FCC ARRM DISCUSSED ABOVE?**

3 A. No. One type of intercarrier compensation revenue, originating switched intrastate
4 access revenue, is not “protected” by the above discussed mechanism because it is not
5 part of the Baseline Revenue (the Base Period Revenue of the ARC/CAF access recovery
6 mechanism). I expect the originating switched intrastate access revenue to be relatively
7 small, however, when compared to the “protected” revenue -- terminating switched
8 intrastate access revenue, originating and terminating interstate switched access revenue,
9 net reciprocal compensation from wireless carriers and net reciprocal compensation from
10 wireline carriers.

11 **Q. PLEASE EXPLAIN.**

12 A. First, interstate access minutes of use are typically significantly higher than intrastate
13 access minutes of use. Second, Missouri Valley’s interstate switched access rates, while
14 lower than its intrastate switched access rates, are comparative in magnitude with
15 intrastate switched access rates.⁷³ Therefore, I expect Missouri Valley’s interstate
16 switched access revenue associated with the per minute charges to be higher than its
17 intrastate switched access revenue. Third, originating intrastate switched access revenue
18 is only a portion of its total intrastate switched access revenue. Fourth, it is reasonable to
19 assume that Missouri Valley collects positive and non-trivial amounts of net reciprocal

⁷³ QSI estimates that on a composite basis, Missouri Valley’s current interstate access rates are in the vicinity of 4 cents per minute, while intrastate rates are under 6 cents per minute.

1 compensation revenue (or Missouri Valley would not be advocating a reciprocal
2 compensation rate of over 3 cents per minute, which is exorbitant and unjustified as
3 discussed above).

4 Therefore, when compared to the total levels of the “protected” revenue, Missouri
5 Valley’s originating intrastate switched access revenue is likely small (smaller than 25%
6 of the “protected” revenue). In other words, line losses associated with the migration of
7 Missouri Valley customers to Midcontinent facilities would be associated with a loss of
8 originating intrastate switched access revenue for Missouri Valley, but other intercarrier
9 compensation revenue associated with these customers (terminating intrastate switched
10 access revenue, originating and terminating interstate switched access revenue, net
11 reciprocal compensation) would not be affected: For these types of intercarrier
12 compensation revenue, Missouri Valley would receive offsetting revenue through the
13 newly created mechanisms of ARC and CAF.

14 **Q. IS IT CORRECT THAT MIDCONTINENT’S PROPOSAL TO MISSOURI**
15 **VALLEY INCLUDES COMPENSATION FOR ACCESS REVENUES LOST**
16 **WHEN A CUSTOMER MIGRATES FROM RESALE TO MIDCONTINENT**
17 **FACILITIES?**

18 A. Yes. Midcontinent’s proposal is that it provides Missouri Valley transitional financial
19 assistance by paying 75% of access revenue attributable to migrating customers (payable

1 for 6 months after the migration). Note that this proposal was made before the *FCC*
2 *USF/ICC Transformation Order* was released.⁷⁴

3 **Q. IF THE FCC'S USF/ICC TRANSFORMATION ORDER HAD BEEN AVAILABLE**
4 **TO MIDCONTINENT WHEN IT WAS NEGOTIATING WITH MISSOURI**
5 **VALLEY, WOULD YOU HAVE EXPECTED THEM TO OFFER TO PAY 75**
6 **PERCENT OF "LOST" ACCESS REVENUES?**

7 A. No. As I explained above, the FCC ARRM created by this Order will be compensating
8 Missouri Valley for the vast majority of all interstate switched access and terminating
9 intrastate switched access revenue that may be lost due to customer migration to
10 Midcontinent, and for any other lost lines. As I also explained above, the only type of
11 switched access revenue that will not be compensated by ARC/CAF is originating
12 intrastate switched access, which is likely a small portion of Missouri Valley's total
13 switched access revenue. Midcontinent's proposal to compensate Missouri Valley for 75
14 percent of access revenue attributable to migrating customers for 6 months will likely
15 result in a net gain to Missouri Valley (an over-recovery of "lost" access revenue because
16 the same revenue will be recovered through the ARC/CAF mechanism and
17 Midcontinent's transitional financial assistance).

18 **Q. DO YOU HAVE ANY IDEA WHAT IMPACT THE MIDCONTINENT**
19 **PROPOSAL WILL HAVE?**

⁷⁴ The FCC USF/ICC Transformation Order was released on November 18, 2011, while Midcontinent's Petition is dated November 14, 2011.

1 A. As noted above, Midcontinent is proposing to pay Missouri Valley 75 percent of lost
2 access revenues for six months. While we are not yet sure what magnitude the payments
3 might be, it seems reasonable to assume that Midcontinent's payments would
4 compensate Missouri Valley for roughly three years of lost originating intrastate revenue
5 ($75\%/25\% = 3$).

6 **Q. PLEASE EXPLAIN YOUR CALCULATION.**

7 A. The ARRM pays for all lost access, except for originating intrastate access, which, as I
8 noted above, is estimated to be about 25 percent of all access charges for each customer.
9 Midcontinent's mechanism (75 percent of lost access revenues) is limited to six months,
10 while the loss of originating intrastate switched access revenues will continue as rates are
11 decreased. As a result, Midcontinent's payments over the six month period would be
12 roughly equal to the loss of originating intrastate switched access revenues over a three
13 year period.

14 **X. THE PUBLIC INTEREST STANDARD SUPPORTS MIDCONTINENT'S**
15 **REQUEST FOR FACILITIES-BASED INTERCONNECTION IN THE**
16 **WILLISTON EXCHANGE**

17 **Q. PLEASE DESCRIBE THE PUBLIC INTEREST STANDARD.**

18 A. The public interest standard is interpreted by the Commission, but there are some general
19 points to consider. First, it is recognized that the Commission's task of balancing the
20 private interests of competitors (Missouri Valley and Midcontinent) with the public

1 interests of consumers and the efficient operation of the communications market, is a
2 difficult one. Second, the Commission must determine the best way to accomplish the
3 goal of serving customers in an efficient and cost-effective manner consistent with the
4 statutory mandates in North Dakota (e.g. 49-21-02), which include the development of
5 competitive markets. Finally, the Commission must consider the benefits of competition
6 in this unique situation.

7 **Q. DOES THE FCC DECLARATORY RULING SUPPORT THE**
8 **INTERCONNECTION REQUEST BY MIDCONTINENT?**

9 A. Yes. The FCC has finally clarified, in no uncertain terms, that Congress did not intend
10 to insulate small or rural LECs from competition, preventing subscribers in those
11 communities from obtaining the benefits of competitive local exchange service, including
12 innovative offerings.⁷⁵ Moreover, the FCC has stated that LECs are obligated to fulfill all
13 of the duties set forth in sections 251(a) and (b) of the Act, including the duty to
14 interconnect and exchange traffic, **even if the LEC has a rural exemption from the**
15 **obligations set forth in section 251(c).**⁷⁶ So while Midcontinent and Missouri Valley
16 may differ on the terms and conditions of the interconnection, there is clear direction that
17 the interconnection must occur.

⁷⁵ See Section 251(a) Declaratory Ruling at ¶ 22.

⁷⁶ *Id.* at ¶ 2.

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Q. MISSOURI VALLEY AND MIDCONTINENT DISAGREE ON KEY ISSUES – THE LEVEL OF RECIPROCAL COMPENSATION, ETC. HOW SHOULD THE COMMISSION RESOLVE THOSE DISPUTES?

A. I recommend that the Commission review each position and ask itself, “Which of these positions will benefit consumers, the industry and the public interest thereby resulting in a strong and competitive telecommunications industry?” The Midcontinent positions on the issues in dispute are all superior to those of Missouri Valley when reviewed in this context.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.