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PUBLIC SERVICE COMMISSION

April 2, 2012

Hand Delivered

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

Re: Midcontinent Communications v. Missouri Valley Communications, Inc.
PU-11-697

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of *Motion and Brief in Support of Motion to Strike*.

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

Thank you for your attention to this matter.

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

Sincerely,

PEARCE & DURICK

Zachary E. Pelham
Counsel to Midcontinent Communications

ZEP/ak
Enclosures
cc: David J. Hogue
Patrick J. Ward

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF

Midcontinent Communications, a South Dakota Partnership,	)	Case No. PU-11-697
Complainant,	)	
vs.	)	
Missouri Valley Communications, Inc.	)	
Respondent.	)	

MOTION AND BRIEF IN SUPPORT OF MOTION TO STRIKE

Midcontinent Communications ("Midcontinent"), by its attorneys, hereby submits this motion to strike elements of the testimony filed by Missouri Valley Communications, Inc. ("Missouri Valley") in the above-referenced proceeding and the related proposals for the parties' interconnection agreement.[1] As shown below, each of the portions of Missouri Valley's testimony that is subject to this motion is outside the defined scope of this proceeding, and cannot be considered in the arbitration. Further, consideration of this material and the related issues also would be prejudicial to Midcontinent.

Material Subject to the Motion

This motion addresses testimony filed by Missouri Valley on a distinct, limited set of issues. Those issues are as follows:

- The form of interconnection agreement to be used by the parties.
- Missouri Valley's proposals for conditions on the date when interconnection would be provided, including a requirement that Midcontinent build specific facilities and

[1] The specific portions of the testimony that are subject to this motion are shown in Exhibit 1.

the time between the effective date of the agreement and the time interconnection would be provided.[2]

- Missouri Valley's proposal to include a specified ratio of terminating traffic for each party in the agreement for purposes of calculating reciprocal compensation.
- Missouri Valley's proposal to limit the number of local service requests ("LSRs") to five per day.
- The length of the period for cutovers from resold service to facilities-based service.
- Missouri Valley's proposal to terminate the resale discount on the effective date of the new interconnection agreement.
- The length of the period during which transitional financial assistance will be provided to Missouri Valley.
- The amount of transitional financial assistance payments to be made to Missouri Valley

Each of these issues was raised for the first time in Missouri Valley's prefiled testimony.

The New Issues Raised by Missouri Valley Are Outside the Scope of this Proceeding

Interconnection arbitration proceedings are governed by a specific set of procedures designed to ensure that the parties litigate only the issues that are in dispute. Under Section 252(b)(2) of the Communications Act, the party filing a petition for arbitration is required to provide the state commission with a list of unresolved issues in the proceeding.[3] The other party, in this case Missouri Valley, then has the opportunity to file a response that contains "such additional information as it wishes" to provide to the state commission. The Commission's rules specifically provide that the responding party may use its response to "present additional issues."[4] This is the only opportunity under the Commission's rules for a responding party to

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[2] This motion to strike does not include testimony relating to the question of whether the effective date of the interconnection agreement should be delayed during appeals of the Commission's decision, which was raised properly by Missouri Valley.
[3] 47 U.S.C. § 252(b)(2).
[4] N.D. Admin. Code § 69-02-10-07.

raise additional issues. Missouri Valley availed itself of this opportunity, filing a response on December 8, 2011.[5]

These initial filings define the limits of the scope of the arbitration. However, given that Missouri Valley had exercised its right not to negotiate with Midcontinent prior to the time the arbitration petition was filed, additional processes were specified in the scheduling order to provide further opportunities to refine the issues.[6] The scheduling order required Midcontinent to provide a specific form of interconnection agreement to Missouri Valley.[7] That agreement, along with a detailed explanation of the provisions, was sent to Missouri Valley on February 3, 2012.[8] Missouri Valley responded to the proposed agreement on February 28, 2012, with its own detailed explanation, and specific proposals for changes to Midcontinent's proposed agreement.[9] The letter from Missouri Valley informed Midcontinent that "open/unresolved issues are few," and provided a comprehensive description of each issue on which Missouri Valley disagreed with Midcontinent's proposal, including specific contractual language.

To confirm the status of the open issues Midcontinent filed a list of open issues in the arbitration on March 14, 2012, including a chart that showed Midcontinent's original proposal, Missouri Valley's response and the issues on which the parties had agreed and the issues on

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[5] Missouri Valley's Response to Midcontinent's Petition for Arbitration Statement of Issues (Dec. 8, 2012).
[6] *See* Midcontinent Petition for Arbitration (Nov. 14, 2011) at 4 n.3.
[7] *See* Revised Scheduling Order (Jan. 26, 2012) at 1.
[8] Email correspondence from J.G. Harrington, Counsel to Midcontinent, to David Hogue, Counsel to Missouri Valley, Feb. 3, 2012. A copy of this email was sent to the arbitrator and the Commission staff.
[9] Letter from David Hogue, counsel to Missouri Valley, to J.G. Harrington, Counsel to Midcontinent, Feb. 28, 2012 (the "February 28th Letter"). A copy of this letter is attached as Exhibit 2.

which there was still disagreement.[10] That list was served on Missouri Valley, and Missouri Valley did not object to the list or inform the arbitrator or Midcontinent that there was any other open issues between the parties.

Collectively, these filings describe the scope of the arbitration, as refined by the submissions and correspondence of the party. Missouri Valley has had three distinct opportunities in the course of the proceeding to introduce any issues that it believed should be included – its initial response, its response to Midcontinent's proposed interconnection agreement, and the period following the submission of the revised issues list. Missouri Valley actually used two of those opportunities, in both cases to narrow the scope of the proceeding.

Despite all of these opportunities, Missouri Valley did not make any of the proposals listed above at any time prior to the filing of prefiled testimony. In the case of six of the eight new issues, Missouri Valley actually agreed to the terms proposed by Midcontinent in the February 28th Letter:

- Missouri Valley agreed to use the existing resale agreement as the basis for the new interconnection agreement, and accepted all of the terms that it did not specifically continue to dispute.[11] Now it proposes to start from scratch with its own terms and conditions.[12]
- Missouri Valley agreed to provide interconnection within 60 days of the effective date of the agreement.[13] Now it proposes that interconnection not be available until Midcontinent builds out facilities to serve the entire Williston exchange and that interconnection not be provided until 180 days after the effective date of the agreement.[14]
- Missouri Valley agreed that cutovers from resold service to facilities-based service would be completed within one year of the date of interconnection.[15] Now it

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[10] Submission of List of Open Issues in Arbitration (Mar. 14, 2012). A copy of this filing is attached hereto as Exhibit 3.
[11] February 28th Letter at 2.
[12] Kilgore direct testimony, page 1, line 23 to page 2, line 2, Attachment 1.
[13] February 28th Letter at 4.
[14] Kilgore direct testimony, page 1, line 23 to page 2, line 2, page 5, lines 18 to 20.
[15] February 28th Letter at 4.

proposes to complete the cutovers in 421 business days, or approximately 20 months.[16]

- In agreeing to the general terms and conditions proposed by Midcontinent, Missouri Valley agreed to continue the existing resale agreement.[17] Moreover, Midcontinent did not request any modifications to the current resale agreement in its request for interconnection or in its petition for arbitration, so the status of the resale agreement never was an issue in this proceeding. Missouri Valley now proposes to terminate the resale discount on the effective date of the new interconnection agreement.[18]
- Missouri Valley agreed that it would be appropriate for Midcontinent to provide transitional financial assistance for a period of six months after each customer is switched from resale to Midcontinent facilities-based services.[19] Missouri Valley now proposes that transitional financial assistance be provided indefinitely.[20]
- Missouri Valley agreed that the amount of transitional financial assistance should be 75% of the access charges attributable to resale customer being switched to facilities-based services.[21] Missouri Valley now proposes a much greater amount, based on total lost revenues.[22]

Missouri Valley's agreement to the last two items was memorialized not only in the February 28th Letter, but in specific proposed contract language attached to the letter.

The remaining issues – inclusion of a specified ratio of terminating traffic for each party in the agreement and a limitation of five LSRs a day – were never raised at all before Wednesday. They simply appeared for the first time, one week before the scheduled hearing date, in Missouri Valley's prefiled testimony.[23]

Given the facts, and the actions of Missouri Valley prior to the submission of its testimony, there can be no question that these issues all are outside the defined scope of this

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[16] Kilgore direct testimony, page 5, lines 23 to 28.
[17] February 28th Letter at 2.
[18] Kilgore direct testimony, page 6, lines 4 to 7.
[19] February 28th Letter at 4-5.
[20] Kilgore direct testimony, page 6, lines 7 to 11, Duval direct testimony, page 11, line 22 to page 19, line 5.
[21] February 28th Letter at 4-5
[22] Kilgore direct testimony, page 6, lines 7 to 11, Duval direct testimony, page 11, line 22 to page 19, line 5.
[23] Duval direct testimony, page 5, lines 16 to 17 (ratio of parties' terminating traffic), Kilgore direct testimony, page 2, lines 5 to 6, page 5, lines 5 to 6, page 5, lines 23 to 28 (limitation on LSRs).

proceeding. The entire purpose of the requirement that a petitioning party define the open issues, and that the other party respond, is to ensure that the parties and the arbitrator are aware of what issues are to be arbitrated. This allows them to focus their efforts on developing the facts relating to those issues and attempting to resolve issues prior to the arbitration. The addition of eight new issues in a party's prefiled testimony one week before the hearing is like adding a tort claim to a contract case on the eve of a trial.

Further, when a party has agreed to specific resolutions of issues, those issues are closed. It would be nearly impossible to conduct an arbitration if every issue potentially was subject to being reopened. This is particularly the case when a party tries to throw out an entire agreement after it has stated on the record that, with limited exceptions, the terms of that agreement are acceptable. Midcontinent and the arbitrator are entitled to rely on a party's representation when it says "Compared to the volume of Midcontinent's proposed interconnection agreement, Missouri Valley's responses are few, so open/unresolved issues are few," and they are entitled to rely on the list of remaining issues provided by that party as defining the scope of what remains to be decided.[24]

Moreover, in addition to all of the other reasons why Missouri Valley is not entitled to raise this issue, the proposal to require Midcontinent to build out facilities to serve the entire Williston exchange is prohibited as a matter of law. Section 253 of the federal Communications Act prohibits state regulators from adopting any requirement that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[25] The FCC specifically has ruled that Section 253 bars state

[24] February 28th Letter at 2.
[25] 47 U.S.C. § 253(a).

regulators from requiring competitive providers to build out any facilities.[26] This has been settled law for nearly 15 years. It not only is outside the scope of the issues raised in this proceeding, it is out of bounds for any arbitration.

The Only Appropriate Remedy Is to Strike the Offending Testimony and Related Issues

This motion asks that the listed portions of Missouri Valley's testimony be struck from the record and that Missouri Valley be prohibited from arguing that the positions it is taking on those issues should be adopted. This is the only appropriate remedy for two distinct reasons.

First, these issues are outside the scope of the proceeding *as Missouri Valley itself previously defined it.* As noted above, Missouri Valley had at least three distinct opportunities to propose issues to be resolved in this arbitration or to dispute Midcontinent's characterization of those issues and did not raise any of these issues on any of those occasions. In at least three cases – the proposal to limit the number of LSRs, the proposal to adopt a specified ratio of terminating traffic for each party and the proposal to require Midcontinent to build out its facilities to serve the entire Williston exchange – Missouri Valley never made any proposal on any topic relating to the issue. In six cases, Missouri Valley actually ***agreed*** to specific terms on the issues. Missouri Valley should be held to its previous agreements and, in any event, should not be permitted to get a fourth bite at the apple. That would be entirely contrary both to the intent of the arbitration provisions of Section 252 of the Communications Act and to the specific requirements of the Commission's rules, which provide that responding parties can raise new

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[26] Public Utility Commission of Texas, *Memorandum Opinion and Order,* 13 FCC Rcd 3460 (1997). In that order, the FCC stated that: "The . . . build-out requirements are of central importance to competitive entry because these requirements impact the threshold question of whether a potential competitor will enter the local exchange market at all. We preempt enforcement of these requirements because they restrict the means or facilities through which a party is permitted to provide service in violation of section 253, and, independently, because they impose a financial burden that has the effect of prohibiting certain entities from providing telecommunications services in violation of section 253." *Id.* at 3466.

issues only in their responses to petitions for arbitration. In this context, the only correct action is to strike the testimony and bar consideration of the new issues.

Second, there is no practical way to cure Missouri Valley's offense except by striking the testimony and barring consideration of these issues. Midcontinent will be irrevocably prejudiced by consideration of these issues and the testimony.

As is evident from Midcontinent's prefiled testimony, it did not prepare any materials to address these issues because it had no notice whatsoever that Missouri Valley had any intent to raise them. Indeed, in most cases, it relied on Missouri Valley's representation that the issues were resolved. As a result, Midcontinent has offered no evidence on these issues, which is a significant handicap, one caused entirely by Missouri Valley's actions.

It would be no answer to say that Midcontinent could present live direct testimony. As a practical matter, preparation of direct testimony on the complex issues raised by Missouri Valley would take a significant amount of time, and Midcontinent's witnesses have not undertaken the research and analysis necessary to respond. Live direct testimony also is less useful than prefiled direct testimony because it is less precise and harder for the finder of fact to consult when preparing a decision. Equally important, even if it were possible to prepare live direct testimony (or, in the brief time remaining before the hearing, supplemental prefiled testimony), Midcontinent would not have the benefit of discovery on these issues. Discovery would be important on many of the new issues. For instance, Midcontinent would need to explore the financial underpinnings of Missouri Valley's transitional support proposal and, given the vague nature of the testimony, exactly how long Missouri Valley would anticipate receiving compensation. Similarly, there would be questions about Missouri Valley's ability to provide interconnection within the time frame proposed by Midcontinent (previously accepted by

Missouri Valley and now rejected), and concerning Missouri Valley's entirely new buildout and LSR proposals.[27]

Delaying the hearing also is not an appropriate remedy; indeed it is unacceptable. Midcontinent is ready, willing and able to proceed on the issues that properly are included in this arbitration, and has expended considerable resources to prepare, including ensuring the availability of its witnesses and counsel. Delay would force Midcontinent to expend additional resources to address Missouri Valley's improper actions. Moreover, delay would reward Missouri Valley, as its goal from the start of this proceeding has been to avoid providing interconnection and to avoid facing competition in the Williston market. The burden of any remedy for Missouri Valley's actions should fall entirely on Missouri Valley, and therefore the correct remedy is to strike the offending testimony and issues.

[27] Among the questions that would have to be explored in discovery concerning the buildout proposal would be the actual extent of Missouri Valley's network, its criteria for building new facilities, its schedule for doing so, and how much it spends on new construction. While Midcontinent's own experience suggests that Missouri Valley can process many more than five LSRs a day, discovery would be necessary to determine Missouri Valley's actual capacity.

Conclusion

For all of these reasons, the arbitrator should strike all of the testimony identified in Exhibit 1 to this motion and should bar any consideration of the issues raised in such testimony.

Dated: April 1, 2012

PEARCE & DURICK

/s/

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Exhibit 1

Specific Portions of Testimony Subject to this Motion

Portions of Missouri Valley Testimony Subject to Motion to Strike

Identification	Description	Reason
Kilgore direct testimony, page 1, line 23 to page 2, line 2	Question and answer concerning conditions for Midcontinent market entry and proposed interconnection agreement terms.	Not raised as an issue in either response to petition or response to proposed interconnection agreement.
Kilgore direct testimony, page 2, lines 5 to 6	Proposal to limit number of LSRs to 5 per day (but not proposed charge per LSR).	Not raised as an issue in either response to petition or response to proposed interconnection agreement.
Kilgore direct testimony, page 5 lines 5 to 6	Proposal to limit number of LSRs to 5 per day (but not proposed charge per LSR).	Not raised as an issue in either response to petition or response to proposed interconnection agreement.
Kilgore direct testimony, page 5, lines 18 to 20	(1) 180 day period for completing interconnection. (2) Requirement that Midcontinent build out its network prior to effectiveness of interconnection agreement.	(1) Not raised as an issue in either response to petition or response to proposed interconnection agreement and contrary to specific statement that Midcontinent's period for completing interconnection would be accepted. (2) Not raised as an issue in either response to petition or response to proposed interconnection agreement; contrary to specific statement that Missouri Valley accepted basic terms for effective date of agreement; and contrary to FCC prohibition on build out requirements for competitive carriers.
Kilgore direct testimony, page 5, lines 23 to 28	(1) Proposal to limit number of LSRs to 5 per day. (2) Proposal to have a transition period of 421 business days (approximately 20 months).	(1) Not raised as an issue in either response to petition or response to proposed interconnection agreement. (2) Missouri Valley agreed to the one year transition period proposed by Midcontinent in the response to the proposed interconnection agreement.

Identification	Description	Reason
Kilgore direct testimony, page 6, lines 4 to 7	Proposal to terminate resale discount on effective date of interconnection under new agreement.	Not raised as an issue in Missouri Valley's response; Missouri Valley agreed to the language, proposed by Midcontinent, that preserves the resale agreement, in Missouri Valley's response to the proposed interconnection agreement; and the resale agreement itself is outside the scope of this proceeding.
Kilgore direct testimony, page 6, lines 7 to 11	Proposal to extend transition assistance beyond 6 months following cutover of a customer and to increase the amount of assistance from 75% of access charges.	Missouri Valley agreed to both the 6 month period and the use of 75% of access charges as the amount to be paid in its response to Midcontinent's proposed interconnection agreement, and additionally proposed its own language to be added to the agreement to govern the transitional assistance payments.
Kilgore direct testimony, Attachment 1	Proposed terms and conditions for interconnection.	Missouri Valley provided its proposed terms and conditions in its response to Midcontinent's proposed interconnection agreement, agreeing to all but the specific terms that were discussed in the response.
Duval direct testimony, page 5, lines 16 to 17	Proposal to adopt 80/20 ratio of terminating traffic in Midcontinent-Missouri Valley interconnection agreement.	Not raised as an issue in Missouri Valley response or in response to Midcontinent's proposed interconnection agreement.
Duval direct testimony, page 11, line 22 to page 19, line 5	Discussion of issues relating to appropriate level and time period for transitional assistance.	Missouri Valley agreed to both the 6 month period and the use of 75% of access charges as the amount to be paid in its response to Midcontinent's proposed interconnection agreement, and additionally proposed its own language to be added to the agreement to govern the transitional assistance payments.

Exhibit 2

Missouri Valley Response to Proposed Interconnection Agreement

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
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MARK F. PURDY
(1927-2011)

February 28, 2012

J.G. Harrington
Dow Lohnes, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Re: ND PSC Case No. PU-11-697 - Draft Interconnection Agreement

Dear Mr. Harrington:

Consistent with the procedural status of this case, we respond to the draft interconnection agreement presented by you on behalf of Midcontinent on February 3, 2012.

Under ND Admin. Rules 69-02-10-05 and -06, Midcontinent's proposed interconnection agreement is relevant documentation that should have been provided coincident with its petition for arbitration on November 14, 2011. Considering Rule 69-02-10-07 and Act Section 252(b)(3) allowing Missouri Valley 25 days to respond, and considering the complexities involved in evaluating your proposal, we are confident you understand Missouri Valley's response to Midcontinent's proposal is later than the two weeks requested in your February 3 letter.

Preliminary Statement

On November 14, 2011, Midcontinent petitioned for arbitration of its June 14, 2011 request for interconnection "for the purpose of exchanging local telecommunications traffic." Missouri Valley moved to dismiss the petition.
The PSC established a "two track" procedure,
1) for the Commission to hear and decide the motion to dismiss Midcontinent's petition, and
2) for the arbitrator to hear and decide interconnection agreement issues, IF it is determined that Missouri Valley must interconnect.

Whether there is a duty of interconnection is a threshold legal question, not an issue for arbitration. Arbitration is proceeding on its track simultaneous with the Commission's consideration of the threshold legal question. The parties and the arbitrator are proceeding with the arbitration process assuming but not conceding the Commission will decide there is a duty of interconnection. If the Commission were to decide there is no duty of interconnection, arbitration of an interconnection agreement is moot. Missouri Valley's participation in

arbitration proceedings is not a waiver of its motion to dismiss Midcontinent's petition or any of Missouri Valley's rights under the Telecommunications Act, including but not limited to rights to judicial review of any action of the Commission with respect to Midcontinent's petition for arbitration or with respect to Missouri Valley's motion to dismiss the petition.

The arbitration process to determine the particular terms and conditions of agreements to fulfill interconnection duties is limited to open/unresolved issues (Act § 252 (b)(1) that are set forth in the petition for arbitration (§ 252 (b)(4)). Accordingly, Missouri Valley's response to Midcontinent's proposed interconnection agreement is coordinated with Midcontinent's original request for interconnection "for the purpose of exchanging local telecommunications traffic" and Midcontinent's list of issues (Exhibit A) set forth in its petition for arbitration. Copies of Midcontinent's list of issues and Missouri Valley's response are enclosed with this letter for convenient reference.

The issues are:

1. General Terms and Conditions
2. Terms and Conditions for Interconnection and Number Portability
3. Technical Interconnection Requirements
4. Point of Interconnection
5. Reciprocal Compensation
6. Number Portability
7. Compensation for Non-local Traffic
8. Date of Interconnection
9. Transition from Current Resale Arrangements
   a) Schedule for transition
   b) Transitional financial compensation to Missouri Valley.

Compared to the volume of Midcontinent's proposed interconnection agreement, Missouri Valley's responses are few, so open/unresolved issues are few. Acceptance or rejection of proposals and counterproposals are summarized below. Counterproposals are presented separately rather than being incorporated into a complete form of agreement. Counterproposals are presented in the same format as Midcontinent's proposal, appropriately marked so they can be installed in a final form of agreement via word processing cut and paste techniques.

Issue: General Terms and Conditions

Missouri Valley accepts Midcontinent's proposal that the form of an interconnection agreement be based that the parties' existing resale agreement (PU-04-638).

General terms section 4 (definitions) is accepted, subject to correction of an obvious mistake that the definition of "Agreement" refers to the interconnection agreement, not to resale.

The glossary is accepted. (We note not all terms defined in section 4 or in the glossary are relevant or material to an interconnection agreement for the exchange of local traffic.)

Attachment 4 is accepted.

Exhibit 1 is accepted.

Issue: Terms and Conditions for Interconnection and Number Portability

See counter-proposals to amend general terms sections 1.1 and 1.2.

General terms section 2.2.1 should be amended to be consistent with amended section 1.1

General terms sections 2.1 and 2.2.2 through 2.28 are accepted.

General terms section 3 is accepted, subject to responses to specified sections of Attachments described in section 3.

Attachment 1 section 1.1 should be amended to be consistent with general terms amended section 1.2

Issue: Technical Interconnection Requirements

This issue is addressed in response to Attachment 1, section 2.

Attachment 1, section 2.8 providing for DS1 electrical interconnection is accepted.

Attachment 1 should be amended to provide that any impasse in negotiations as to changes to interconnection under sections 2.2, 2.4.2 or 2.8 shall not be subject to the dispute resolution provisions under general terms sections 2.27.

Issue: Point of Interconnection

This issue is addressed in response to Attachment 1, section 2.

Attachment 1, section 2.1 providing the Point of Interconnection as Missouri Valley's switch is accepted.

Issue: Reciprocal Compensation

This issue is addressed in response to Attachment 1, section 3.

Attachment 1, section 3.1 re facilities compensation should be amended to be consistent with section 2.1 providing the POI as Missouri Valley's switch.
See counter-proposal to sections 3.1.4 and 3.1.5.

Attachment 1, section 3.2.1 is rejected.
See counter-proposal to Attachment 1, section 3.2.1.

Issue: Number Portability

Attachment 3 is accepted.

Issue: Compensation for Non-local Traffic

This issue is addressed in response to Attachment 1.

See counter-proposal to Attachment 1, section 1.1.
Attachment 1, section 3.2.2 is rejected.

Issue: Date of Interconnection

This issue is not addressed in Midcontinent's proposed interconnection agreement.

This issue is addressed in Midcontinent's statement of issues and Missouri Valley's response.

Missouri Valley agrees that interconnection should be completed within 60 days after an interconnection agreement is approved by the Commission or 60 days after a later date as either party's action for judicial review under of the Commission's action becomes final.

See responses to general terms sections 1.1 and 2.2.1 and counterproposals 1.1 and 2.2.1.

Issue: Transition from Current Resale Arrangements

(1) Schedule for transition

This issue is not addressed in Midcontinent's proposed interconnection agreement.

This issue is addressed in Midcontinent's statement of issues and Missouri Valley's response.

Missouri Valley agrees that transition of Midcontinent's resale customers should be accomplished within one year after interconnection is accomplished.

Attachment 2 is accepted, subject to modifications to provide Missouri Valley's transition activities would be limited to disconnection of its service to Midcontinent's customers and Missouri Valley will attend to its customers before attending to Midcontinent and its customers in case of schedule conflicts.
See counter-proposal to Attachment 2, section 3.1.5.

Attachment 5, Pricing Attachment, should be amended to clarify how prices may be changed.
See counter-proposal to Attachment 5.

(2) Transitional financial compensation to Missouri Valley.

This issue is not addressed in Midcontinent's proposed interconnection agreement.

This issue is addressed in Midcontinent's statement of issues and Missouri Valley's response.

Missouri Valley accepts Midcontinent's proposal that Midcontinent pay to Missouri Valley 75% of access charges attributable to each customer switched from resale to facilities based service for a period of six months after a change occurs.

See proposed addition to Attachment 1, section 3.6.

All rejections and counter proposals are presented in the attached document named MVC-Midco interconnection Counter Proposal.doc. The proposals are contained in a single file, each on a separate page. Each is based on Midcontinent's "clean" proposed agreement presented on February 3. Each is marked in customary form to show verbiage ~~rejected~~ and proposed new verbiage. Each counter proposal is also presented in "clean" form. Each is briefly explained.

Very truly yours,

David J. Hogue
Pringle & Herigstad P.C.

Enclosures

cc: Patrick Durick
Patrick Ward
Zachary Pelham

MISSOURI VALLEY COMMUNICATIONS, INC.'s COUNTERPROPOSAL
(MVC-Midco interconnection agreement Counter Proposal.doc)

INTERCONNECTION AGREEMENT

Between

MISSOURI VALLEY COMMUNICATIONS, INC.

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

_____, 2012

Section 1.0 - GENERAL TERMS

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

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

EXPLANATION

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

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

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

EXPLANATION

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

Section 2.0 - TERMS AND CONDITIONS

2.2 Term of Agreement

2.2.1 This Agreement shall become effective ~~in accordance~~ upon approval under section 1.1, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. In the case of such action, this agreement shall become effective or shall not become effective as finally determined in such action. This Agreement shall be binding upon the Parties for a term of three (3) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.1 This Agreement shall become effective upon approval under section 1.1, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. In the case of such action, this agreement shall become effective become or shall not become effective as finally determined in such action. This Agreement shall be binding upon the Parties for a term of three (3) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

EXPLANATION

Section 2.2.1 should be amended to be consistent with agreement section 1.1 and Act § 252(b)(4) and to provide for judicial review of Commission action under Act § 252(e)(6).

Interconnection Attachment

1. General

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

1.2 1.1 This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND (including EAS Traffic) that is originated by an End-User Customer of one Party and is terminated to an End-User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End-User Customers physically located in the Exchange Area. This Interconnection Attachment shall apply only to the transport and termination of Local/EAS Traffic and shall not apply to any other traffic or service.

EXPLANATION

Attachment Section 1.1 should be amended to clarify the agreement affects only the exchange of local telecommunications traffic as originally requested by Midcontinent. References to ISP Bound Traffic must also be deleted from other sections of Attachment 1, sections 2.1, 2.3, 2.4 subsections of section 2.4, 3.2.1, 3.3, 3.4 and 3.5, all consistent with the local nature of the interconnection.

2. Physical Connection

2.11 Any impasse in negotiations as to changes to interconnection under sections 2.2, 2.4.2 or 2.8 shall not be subject to the dispute resolution provisions under general terms sections 2.27.

2.11 Any impasse in negotiations as to changes to interconnection under sections 2.2, 2.4.2 or 2.8 shall not be subject to the dispute resolution provisions under general terms sections 2.27.

EXPLANATION

This proposed new section will preserve the parties' rights to decline proposed changes regarding physical connection arrangements.

3. Compensation

3.1.4 If Midcontinent utilizes a switch outside the ~~MVC's territory and MVC chooses to purchase dedicated or common (shared) transport from Midcontinent for transport and termination of MVC originated traffic, MVC will pay Midcontinent for no more than the airline miles between the V & H coordinates of the POI within or at the border of the MVC's serving area boundary where Midcontinent receives the MVC originated traffic and the V & H coordinates of the MVC Exchange rate center area that the Midcontinent terminating NPA/NXX is associated within the same LATA. For these situations, MVC will compensate Midcontinent at dedicated transport rates specified in the MVC applicable tariff and based upon the functions provided by Midcontinent as defined in this Attachment.~~

3.1.5 ~~In the event that Midcontinent elects to offer service within MVC's serving area using a switch located outside MVC's serving area,~~ Williston Exchange area for the exchange of local telecommunications traffic under this agreement, Midcontinent agrees to provide the interconnection facility for and transport of both Parties' traffic outside the Williston Exchange area ~~MVC's contiguous serving area in which Midcontinent offers service~~, at no charge to MVC. ~~Consistent with the requirements of Section 3.1.4,~~ MVC will not compensate Midcontinent for the shared interconnection facility or transport beyond the POI in the Williston Exchange area. ~~MVC's contiguous serving area in which Midcontinent offers service~~.

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

EXPLANATION

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

(Section 3.1.5 is deleted and following sections renumbered.)

3.2 Traffic Termination Reciprocal Compensation

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

3.2 Traffic Termination Reciprocal Compensation

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

EXPLANATION

The addition of "reciprocal compensation" terminology is based on Act section 251(b)(5).

This proposal rejects Midcontinent's proposal for "bill and keep" reciprocal compensation because MVC does not agree that "traffic is roughly in balance." MVC proposes minute of use billing for termination of local/EAS traffic exchanged, subject to conversion to "bill and keep" if verifiable actual usage data traffic were to show "traffic is roughly in balance."

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

EXPLANATION

Attachment 1, section 3.2.2 should be deleted because the interconnection agreement affects only the exchange of local telecommunications traffic and does not provide for access traffic. Deletion of section 3.2.2 is consistent with Midcontinent's proposed Attachment 1, sections 1.3.4 and 3.5.

Attachment 1, Section 3.2.3 should be renumbered accordingly.

3.6 Transitional Compensation

Midcontinent agrees to pay to MVC "Transitional Compensation" for each End User Customer transferred from status as Midcontinent's customer of MVC's local service resold by Midcontinent to status as Midcontinent's facilities based End User Customer. Transitional Compensation shall be determined and paid for each transferred customer. The per customer Transitional Compensation shall be a monthly amount equal to 75% of the average monthly interstate and intrastate access charges attributable to the transferred customer during the six (6) months preceding the date of transfer, payable by Midcontinent for six (6) months following the date of transfer. The Parties' performance under Attachment 2 will include exchange of information for the determination of per customer Transitional Compensation amounts.

3.6 Transitional Compensation

Midcontinent agrees to pay to MVC "Transitional Compensation" for each End User Customer transferred from status as Midcontinent's customer of MVC's local service resold by Midcontinent to status as Midcontinent's facilities based End User Customer. Transitional Compensation shall be determined and paid for each transferred customer. The per customer Transitional Compensation shall be a monthly amount equal to 75% of the average monthly interstate and intrastate access charges attributable to the transferred customer during the six (6) months preceding the date of transfer, payable by Midcontinent for six (6) months following the date of transfer. The Parties' performance under Attachment 2 will include exchange of information for the determination of per customer Transitional Compensation amounts.

Explanation

This proposed Attachment 1, Section 3.6 records details of MVC's acceptance of Midcontinent's proposal for transitional compensation, a subject not addressed in Midcontinent's proposed interconnection agreement.

Pre-Ordering, Ordering, Provisioning, Maintenance and Repair

Attachment 2 is accepted, subject to addition of new section 3.1.5

3.1.5

A Party's services in the transfer of its End User Customers to the other Party will be limited to disconnection of its service to the customer. In cases of work schedule conflicts, a Party may attend to its continuing customers in preference to disconnection of a customer to be transferred.

3.1.5

A Party's services in the transfer of its End User Customers to the other Party will be limited to disconnection of its service to the customer. In cases of work schedule conflicts, a Party may attend to its continuing customers in preference to disconnection of a customer to be transferred.

EXPLANATION

This proposed new provision reflects MVC's proposal in response to Midcontinent's list of issues as to transition from current resale arrangements, expressed with equal application to both parties as to future transfers.

Pricing Attachment

General.

The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change as herein provided. Charges that are filed tariffs are subject to change in accordance with applicable law and procedure under the North Dakota Century Code. Charges that are not filed tariffs are subject to change by each party in its unilateral business discretion, provided that charges shall be conform to NDCC section 49-21-07 relating to price discrimination. ~~MVC~~ Each Party shall provide updated versions of the Tariff or other price change prior to the effective date of such change.

The currently effective rates are:

The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change as herein provided. Charges that are filed tariffs are subject to change in accordance with applicable law and procedure under the North Dakota Century Code. Charges that are not filed tariffs are subject to change by each party in its unilateral business discretion, provided that charges shall be conform to NDCC section 49-21-07 relating to price discrimination. Each Party shall provide updated versions of the Tariff or other price change prior to the effective date of such change.

The currently effective rates are:

EXPLANATION

This proposal clarifies that prices are not negotiated but are established as filed tariffs or as each party's standard rates administered on a "most favored nation" basis.

A. Service Order Charges

1. Service Order Charge (LSR)	
Facility Administration Charge	$ ~~20.00~~/TBArequest*
Primary Charge	$ ~~18.00~~/TBArequest*
Subsequent Charge	$ ~~12.00~~/TBArequest*
2. Service Order Cancellation Charge	$ ~~12.00~~/TBArequest*
3. Expedited Due Date in addition to SOC	$ ~~32.00~~/TBArequest*
4. Order Change Charge	$ ~~12.00~~/TBArequest*

* All Tariff rate elements (both recurring and non-recurring) are applied as stated in the applicable tariff. Rate elements listed in this Attachment are not all inclusive.

B. General Charges:

1. Technical Labor

Install & Repair Technician:	
Basic Time (normally scheduled hours)	$TBA/hr
Overtime (outside normally schld hrs on schld work day)	$TBA/hr
Trip Charge	$TBA
Call out	Min 2 hours
Central Office Technician:	
Basic Time (normally scheduled hours)	$TBA/hr
Overtime (outside normally schld hrs on schld work day)	$TBA/hr
Call out	Min 2 hours
Customer Service Representative:	
Basic Time (Normal Scheduled)	$TBA/hr
Overtime (outside normally schld hrs on schld work day)	$TBA/hr
Call out	Min 2 hours

C. Transport Charges — Per Tariff

Exhibit 3

Midcontinent Submission of List of Open Issues in Arbitration

PEARCE & DURICK

ATTORNEYS AT LAW
314 EAST THAYER AVENUE • P.O. BOX 400 • BISMARCK, ND 58502
TELEPHONE (701) 223-2890 • FAX (701) 223-7865 • www.pearce-durick.com

ZACHARY E. PELHAM
zep@pearce-durick.com

March 14, 2012

RECEIVED
MAR 14 2012
PUBLIC SERVICE COMMISSION

Hand Delivered

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

Re: Midcontinent Communications v. Missouri Valley Communications, Inc.
PU-11-697

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of a chart of open issues in the above-referenced proceeding that has been prepared by Midcontinent.

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

Thank you for your attention to this matter.

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

Sincerely,

PEARCE & DURICK

Zachary E. Pelham
Counsel to Midcontinent Communications

ZEP/ak
Enclosures
cc: David J. Hogue
Patrick J. Ward

33 PU-11-697 Filed: 3/14/2012 Pages: 10
Submission of List of Open Issues in Arbitration

Midcontinent Communications

Zachary Pelham

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF

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

SUBMISSION OF LIST OF OPEN ISSUES IN ARBITRATION

Midcontinent Communications ("Midcontinent"), by its attorneys, hereby submits its list of open issues in the arbitration in the above-referenced proceeding. This list modifies the list of issues submitted with Midcontinent's petition for arbitration (the "Petition") based on the response to the Petition by Missouri Valley Communications, Inc. ("Missouri Valley"), filed on December 8, 2011, and on Missouri Valley's response to Midcontinent's draft interconnection agreement, which was provided to Midcontinent and the arbitrator in this proceeding on February 28, 2012.

On the attached chart, issues that Midcontinent believes remain open are indicated by yellow highlighting in the second and third column. Issues that Midcontinent believes are resolved are not highlighted.

Midcontinent will continue to seek to resolve the remaining issues in this proceeding during the time remaining before the arbitration and reserves the right to modify this list if issues

are resolved or if it becomes apparent that issues that appeared to be resolved have not been resolved.

Dated: March 14, 2012

PEARCE & DURICK

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ZACHARY E. PELHAM, *ND #05904*
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/s/ J.G. Harrington

J.G. HARRINGTON
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Midcontinent-Missouri Valley Arbitration
Summary of Outstanding Issues

March 14, 2012

Remaining open issues are highlighted in yellow.

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
General terms and conditions	Midcontinent proposes that the parties adopt the general terms and conditions in their current resale agreement.	Missouri Valley proposes to accept the proposed general terms and conditions with the following changes: 1. Modification of the language in Sections 1.1 and 2.2 to base the effective date on the parties' right to bring an action in federal District Court to challenge the agreement's conformity to Sections 251 and 252. 2. Modification of Section 1.2 to limit the agreement to the exchange of local telecommunications traffic. 3. Correction of Section 4 to replace the definition of "Agreement" with a reference to the interconnection agreement.	1. Effective date: The effective date should be delayed only to the extent that a party obtains a stay from the PSC or the court. 2. Limitation to local traffic: The agreement should include ISP-bound traffic. 3. Correction of definition: Accepted.
Other terms and conditions of interconnection and number portability	Terms and conditions for interconnection and number portability can be based on existing facilities-based interconnection agreements between Midcontinent and other North Dakota rural incumbent local exchange carriers, such as Midcontinent's agreement	Missouri Valle proposes to accept Midcontinent's proposed terms and conditions for interconnection and number portability with the following changes: 1. Modification of the language in Section 1.1 of the Interconnection Attachment to limit the agreement to the exchange of local traffic within the Williston exchange. 2. Addition of language to the Interconnection Attachment (new Section	1. Limitation to local traffic: The agreement should include ISP-bound traffic. 2. Impasses: Midcontinent does not accept this change. 3. Compensation for transport: Midcontinent accepts this proposal. 4. Responsibility for disconnection: There should be

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
	with Turtle Mountain Communications, Inc. *See* Docket No. PU-10-20.	2.2) to indicate that impasses concerning changes to interconnection are not subject to dispute resolution provisions of the general terms and conditions. 3. Modifying the language in Sections 3.1.4 and 3.1.5 of the Interconnection Attachment concerning compensation for transport of traffic to indicate that all transport costs from the point of interconnection to a Midcontinent switch located outside the exchange boundaries will be Midcontinent's responsibility. 4. Adding a new Section 3.1.5 to the Pre-Ordering Attachment to specify that a party's obligation for service transitions is limited to disconnecting its service to its customers, and providing that conflicts in scheduling will be resolved in favor of attending to continuing customers. 5. Modifying the pricing attachment to add a reference to tariffed rates and to permit a provider to change rates for other services at its discretion, subject to price discrimination rules.	language concerning the soon-to-be-former carrier's number portability obligations. 5. Pricing: Midcontinent accepts changes as to tariffed services. Pricing should be set in the attachment for non-tariffed services, and should not be subject to change at a party's discretion.
Technical interconnection requirements	Midcontinent proposes that the parties interconnect using either electrical facilities (DS-1 or DS-3) or optical facilities.	Missouri Valley proposes using electrical facilities at the DS-1 level.	Midcontinent accepts Missouri Valley's proposal.
Point of interconnection	Midcontinent proposes that the parties interconnect within the Williston	Missouri Valley proposes interconnection at the Missouri Valley switch.	Midcontinent accepts Missouri Valley's proposal.

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
	exchange at a mutually-agreed point between Missouri Valley's switch and Midcontinent's headend or at any point in the exchange where Missouri Valley interconnects with another carrier (*i.e.*, wireless carriers or interexchange carriers).		
Reciprocal compensation	Midcontinent proposes that the parties adopt bill and keep for reciprocal compensation for local traffic.	Missouri Valley proposes adopting the following approach: a. Reciprocal compensation only for local/EAS traffic (and not for ISP-bound traffic). b. Compensation level set at $0.030249/minute. c. Compensation to be paid unless traffic is within a 55/45 ratio. d. If traffic is within the 55/45 ratio for three consecutive months, then a party may request elimination of per minute billing, and consent will not be unreasonably withheld. e. If, after elimination of per minute billing, if traffic falls outside 55/45 for six consecutive months, either party may request a return to per minute compensation, and consent will not be unreasonably withheld. f. If, after a return to per minute compensation, traffic returns to the 55/45 ratio for three months, it will return to no	1. Midcontinent will accept the concept of a collar within which compensation is not paid, and will accept the general process proposed by Missouri Valley. 2. Midcontinent proposes that the collar be set at 60/40, not 55/45. 3. Midcontinent does not accept access rates as the rates for reciprocal compensation. If not set at bill and keep, the rates should be set under Section 252(d)(2). 4. Any reciprocal compensation rate must be subject to the FCC's rules for intercarrier compensation. 5. The agreement should include provisions for compensation for ISP-bound traffic, either bill and keep or at the $0.0007 per minute rate set

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
		billing and shall not thereafter be subject to reinstatement.	by the FCC.
Number portability	Midcontinent proposes that the parties provide service provider number portability to each other in accordance with the terms under which Missouri Valley provides number portability to wireless carriers or, alternatively, in accordance with the requirements of the FCC's rules.	Missouri Valley accepts Midcontinent's terms for number portability, as described in the proposed interconnection agreement.	No response required.
Compensation for non-local traffic	Midcontinent proposes that arrangements for non-local traffic exchanged by the parties remain the same as today, to the extent those arrangements are consistent with the requirements of the FCC and the Commission. (For purposes of clarity, Midcontinent is not requesting any change in these arrangements, but recognizes that either the FCC or the Commission may change the relevant rules in the future, in which case the amounts or other terms of compensation would be changed.)	Missouri Valley proposes to delete Section 3.2.2 of the Interconnection Attachment, which concerns compensation for access traffic.	Midcontinent accepts this change.

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
Date of interconnection	Midcontinent proposes that interconnection be completed within 60 days of the date that a final interconnection agreement is approved by the Commission.	Missouri Valley agrees to a 60-day period, but seeks to have it commence after any judicial review becomes final.	The effective date of the agreement should not be affected by judicial review unless a stay is issued.
Transition from current resale arrangements	(1) Midcontinent proposes a one year transition period, starting with date interconnection is put into effect. Over that time, Midcontinent resale customers would be switched to Midcontinent's facilities on a schedule that would switch an equal number of customers each week, subject to any mutually-agreed modifications. (2) Midcontinent proposes to provide transitional financial assistance to Missouri Valley. Under that arrangement, Midcontinent would pay 75% of the access charges attributable to each customer switched from resale to facilities-based service (based on average access charges per customer) to Missouri Valley for a	(1) Missouri Valley agrees to a one-year transition period. It does not specify that it agrees to switching an equal number of customers per week. (2) Missouri Valley agrees to payment of 75% of access charges over a six-month period, based on an individual calculation of each customer's access charges. The parties will exchange information needed to determine the specific amounts.	(1) Midcontinent seeks to ensure that the transition will cover an equal number of customers each week. (2) Midcontinent proposes to set the per-customer transition payments at the start of the transition process, so as to avoid the need to make individual customer calculations.

Issue	Midcontinent Position	Missouri Valley Position	Midcontinent Response
	period of six months after the change occurs. To the extent that Missouri Valley's access charges are reduced by rules adopted by the FCC or the Commission during the transition period, those reductions would be reflected in the transitional financial assistance as well.		

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

IN THE MATTER OF	)	
	)	
Midcontinent Communications, a South Dakota Partnership,	)	Case No. PU-11-697
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Missouri Valley Communications, Inc.	)	
	)	
Respondent.	)	

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Annette Kirschenheiter, being first duly sworn, deposes and says that on the 14th day of March, 2012, she mailed copies of the foregoing Submission of List of Open Issues In Arbitration by placing a true and correct copy thereof in an envelope, addressed to the following:

David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. Patrick J. Ward
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

Annette Kirschenheiter

Annette Kirschenheiter

Subscribed and sworn to before me this 14th day of March, 2012.

Suzanne M Cahill

Notary Public

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan. 29, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was on the 1st day of April, 2012, e-mailed to the following:

Mr. David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
dhogue@srt.com

Mr. Patrick J. Ward
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695
pward@zkslaw.com

Dated: April 1, 2012.

/s/ J.G. Harrington
J.G. HARRINGTON

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

IN THE MATTER OF	)	
	)	
Midcontinent Communications, a	)	
South Dakota Partnership,	)	Case No. PU-11-697
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Missouri Valley Communications, Inc.	)	
	)	
Respondent.	)	

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Annette Kirschenheiter, being first duly sworn, deposes and says that on the 2nd day of April, 2012, she mailed copies of the foregoing Motion and Brief in Support of Motion to Strike by placing a true and correct copy thereof in an envelope, addressed to the following:

David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. Patrick J. Ward
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

Annette Kirschenheiter
Annette Kirschenheiter

Subscribed and sworn to before me this 2 day of April, 2012.

Cari Timmons
Notary Public

CARI TIMMONS
Notary Public
State of North Dakota
My Commission Expires Aug. 27, 2014