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April 5, 2012

RECEIVED

APR 05 2012

PUBLIC SERVICE COMMISSION

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 *Order Granting Midcontinent Communication's Motion to Strike Testimony*.

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

Patrick W. Durick
Counsel to Midcontinent Communications

PWD/ak

Enclosures

cc: David J. Hogue
Patrick J. Ward

41 **PU-11-697** Filed: 4/5/2012 Pages: 5
**Order Granting Midcontinent Communication's
Motion to Strike Testimony**

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 5th day of April, 2012, she mailed copies of the foregoing *Order Granting Midcontinent Communication's Motion to Strike Testimony* by placing a true and correct copy thereof in an envelope, addressed to the following:

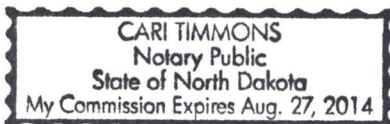
David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

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


Annette Kirschenheiter

Subscribed and sworn to before me this 5 day of April, 2012.


Notary Public



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.)	

ORDER GRANTING MIDCONTINENT COMMUNICATION'S MOTION TO STRIKE TESTIMONY

Midcontinent Communications ("Midcontinent") moves to strike certain pre-filed testimony of Missouri Valley Communications, Inc. ("Missouri Valley"). Midcontinent filed and served its motion on Missouri Valley on April 2, 2012; Midcontinent emailed the motion to me and Missouri Valley on April 1, 2012. In essence, Midcontinent argues that certain testimony that was pre-filed by Missouri Valley's witnesses, Mike Kilgore and Chad A. Duval, should be stricken because the issues discussed in the testimony either were not raised in the petition for arbitration or the response by Missouri Valley to Midcontinent's petition or the testimony differed from what Missouri Valley and Midcontinent previously agreed.

Arguments on the motion were held at the final pre-arbitration hearing on April 2, 2012, at 3 pm. Prior to the scheduled arbitration hearing on April 4, 2012, counsel for Missouri Valley provided a brief outline in resistance to the motion to strike.

Having considered the motion, oral argument from the parties, and the written response of Missouri Valley, I hereby **GRANT** Midcontinent's Motion to Strike the pre-filed direct testimony of Mike Kilgore and Chad A. Duval as specifically set forth in Attachment A to this Order. Further, no mention of, reference to, or discussion of the stricken issues outlined in Attachment A will be permitted at the arbitration hearing. Finally, I reserve the right to make a ruling in the course of the arbitration hearing on certain evidence that may be of a factual nature concerning the issues set forth in Attachment A.

Dated: April 4, 2012



Patrick Ward
Arbitrator

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.

ATTACHMENT A

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.