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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

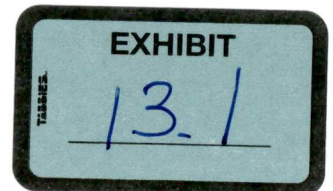
In the Matter of Midcontinent Communications, a
South Dakota Partnership, Petitioner, vs. Missouri
Valley Communications, Inc., Respondent

Case No. PU-11-543

**SUPPLEMENT TO THE DIRECT TESTIMONY OF CHAD A. DUVAL
ON BEHALF OF
MISSOURI VALLEY COMMUNICATIONS, INC.**

April 5, 2012

52 **PU-11-697** Filed: 4/4/2012 Pages: 7
Exhibit 13.1



1 **Q. Can you clarify your statements regarding the FCC's rules related to bill and keep?**

2 A. Yes. In response to the question, "What is the appropriate billing methodology for the
3 exchange of local traffic between MVC and Midcontinent, I indicated that FCC Rules state
4 that,

5 "A state commission may impose bill-and-keep arrangements if the state commission
6 determines that the amount of telecommunications traffic from one network to the
7 other is roughly balanced with the amount of telecommunications traffic flowing in
8 the opposite direction, and is expected to remain so, and no showing has been made
9 pursuant to § 51.711(b) [permitting asymmetrical rates based on a cost study]"

10
11 **Q. Is the rule reference stated above the current FCC rule on bill and keep?**

12 A. No, it is an older version of the rules. The current FCC Rules, as recently modified, state that,
13 "Bill-and-keep arrangements are those in which carriers exchanging
14 telecommunications traffic do not charge each other for specific transport and/or
15 termination functions or services¹".

16
17 **Q. Why did you refer to the old version of the rules in your prefiled direct testimony?**

18 A. My intent was to reference the FCC's long standing position that bill and keep is an
19 appropriate billing methodology when traffic is roughly balanced. While the FCC recently
20 indicated that balance is not necessary to apply a bill and keep methodology, the FCC has
21 maintained the ability to utilize reciprocal compensation for the interconnection of local
22 traffic between wireline carriers.

23
24 **Q. Can you clarify your statements regarding the FCC's rules on developing a rate for the
25 transport and termination of local traffic under a reciprocal compensation
26 arrangement?**

27 _____
28 ¹ 47 C.F.R. § 51.713(b)

1 A. Yes. In response to the question, “What do the FCC rules say about developing a rate for the
2 transport and termination of local traffic under a reciprocal compensation arrangement?”, I
3 indicated that the FCC Rules state, “(a) An incumbent LEC’s rates for transport and
4 termination of telecommunications traffic shall be established, at the election of the state
5 commission, on the basis of:

- 6 (1) The forward-looking economic costs of such offerings, using a cost study pursuant
7 to §§ 51.505 and 51.511;
- 8 (2) Default proxies, as provided in § 51.707; or
- 9 (3) A bill-and-keep arrangement, as provided in § 51.713.”

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Q. Is the rule reference stated above the current FCC rule on developing intercarrier compensation rates?

A. No, the current version of the FCC’s rules does not include Default Proxies as an option for developing intercarrier compensation rates.

Q. As a result of Default Proxies being removed from the FCC’s rules, how would you modify your prefiled direct testimony?

A. I would delete the following language and the associated footnote,
“Proxy rates can be difficult to determine, given the language in the FCC’s rules. Local switching proxies range between \$0.002 and \$0.004 per minute, at the discretion of the State Commission. Transport proxies are established based on the incumbent LEC’s tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings. Entrance facilities and direct-trunked transport charges are flat rate, monthly charges that would be difficult to apply on a per-minute of use basis and change at least annually. In order to calculate the appropriate proxy rate for entrance facilities and direct-trunked transport charges, a traffic study would first need to be prepared at the DS1 level to determine the numerator in the calculation of the per-

1 minute of use rate.”

2
3 **Q. What was your intent in referencing the previous rules related to Default Proxies?**

4 A. My intent was to show another alternative that the NDPSC could utilize in establishing the
5 reciprocal compensation rate for the transport and termination of local traffic between
6 wireline carriers.

7
8 **Q. What does the most recent version of the FCC’s rules say about reciprocal
9 compensation rates for non-access traffic?**

10 A. The FCC’s rules address rates for the transport and termination of non-access traffic in Part 51
11 – Interconnection, and a variety of subsections. I have highlighted certain sections that would
12 appear to allow for non-bill and keep arrangements between two wireline carriers.

13
14 § 51.701(e) defines Non-Access Reciprocal Compensation as,

15 “For purposes of this subpart, a Non-Access Reciprocal Compensation arrangement
16 between two carriers is either a bill-and-keep arrangement, per § 51.713, or an
17 arrangement in which each carrier receives intercarrier compensation for the transport
18 and termination of Non-Access Telecommunications Traffic.”

19
20 § 51.703 outlines the Non-Access reciprocal compensation obligation of LECs and states, in
21 part:

22 “(a) Each LEC shall establish Non-Access Reciprocal Compensation arrangements for
23 transport and termination of Non-Access Telecommunications Traffic with any
24 requesting telecommunications carrier.

25
26 § 51.705 outlines LECs’ rates for transport and termination and states, in part:

27 “(a) Notwithstanding any other provision of the Commission’s rules, by default,
28

1 transport and termination for Non-Access Telecommunications Traffic **exchanged**
2 **between a local exchange carrier and a CMRS provider** with the scope of §
3 51.701(b)(2) shall be pursuant to a bill-and-keep arrangement, as provided in §
4 51.713.” (emphasis added)

5
6 “(b) Establishment of incumbent LECs’ rates for transport and termination

7 (1) This provision applies when, in the absence of a negotiated agreement
8 between parties, state commissions establish Non-Access Reciprocal
9 Compensation rates for the exchange of Non-Access Telecommunications
10 Traffic between a local exchange carrier and a telecommunications carrier
11 other than a CMRS provider where the incumbent local exchange carriers did
12 not have any such rates as of December 29, ²⁰¹¹ ~~2012~~. Any rates established
13 **pursuant to this provision apply between December 29, ²⁰¹¹ ~~2012~~ and the date**
14 **at which they are superseded by the transition specified** in paragraphs
15 (c)(2) through (c)(5) of this section. (emphasis added)

16 (2) An incumbent LEC’s rates for transport and termination of
17 telecommunications traffic shall be established, at the election of the state
18 commission, on the basis of:

- 19 (i) The forward-looking economic costs of such offerings, using a cost
20 study pursuant to §§51.505 and 51.511; or
21 (ii) A bill-and-keep arrangement, as provided in §51.713.

22
23 §51.705(c) outlines the transition of Non-Access Reciprocal Compensation rates to bill-and-
24 keep effective 7/1/2020.

25
26 §51.709 identifies the rate structure for transport and termination and states, in part:

27 “(a) In state proceedings, where a rate for Non-Access Reciprocal Compensation does
28 not exist as of December 29, ²⁰¹¹ ~~2012~~, a state commission shall establish initial rates for

1 the transport and termination of Non-Access Telecommunications Traffic that are
2 structured consistently with the manner that carriers incur those costs, and consistently
3 with the principles in this section.”
4

5 §51.711 outlines Symmetrical non-access reciprocal compensation and states, in part:

6 “(a) Rates for transport and termination of Non-Access Telecommunications Traffic
7 shall be symmetrical, unless carriers mutually agree otherwise, except as provided in
8 paragraphs (b) and (c) of this section.
9

10 §51.713 defines Bill-and-keep arrangements as:

11 “Bill-and-keep arrangements are those in which carriers exchanging
12 telecommunications traffic do not charge each other for specific transport and/or
13 termination functions or services.
14

15 Finally, §51.715 outlines Interim transport and termination pricing and states, in part:

16 “(a) Upon request from a telecommunications carrier without an existing
17 interconnection arrangement with an incumbent LEC, the incumbent LEC shall
18 provide transport and termination of Non-Access Telecommunications Traffic
19 immediately under an interim arrangement, **pending resolution of negotiation or**
20 **arbitration regarding transport and termination rates and approval of such rates**
21 **by a state commission** under sections 251 and 252 of the Act. (emphasis added)
22

23 (1) This requirement shall not apply when the requesting carrier has an existing
24 interconnection arrangement that provides for the transport and termination of
25 Non-Access Telecommunications Traffic by the incumbent LEC.
26

27 (b) Upon receipt of a request as described in paragraph (a) of this section, an
28 incumbent LEC must, without unreasonable delay, establish an interim arrangement

1 for transport and termination of Non-Access Telecommunications Traffic at
2 symmetrical rates.

3 (2) In a state in which the state commission has not established transport and
4 termination rates based on forward-looking economic cost studies, **an**
5 **incumbent LEC shall set interim transport and termination rates either at**
6 **the default ceilings specified in §51.705(c) or in accordance with a bill-**
7 **and-keep methodology as defined in §51.713.** (emphasis added)
8

9 (d) **If the rates** for transport and termination of Non-Access Telecommunications
10 Traffic in an interim arrangement **differ from the rates established by a state**
11 **commission pursuant to §51.705, the state commission shall require carriers to**
12 **make adjustments to past compensation.** (emphasis added)
13

14 **Q. Does this conclude the supplement to your prefiled direct testimony?**

15 **A. Yes.**
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