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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

**DIRECT TESTIMONY OF MIKE KILGORE  
ON BEHALF OF  
MISSOURI VALLEY COMMUNICATIONS, INC.**

March 28, 2012

53    **PU-11-697**    Filed: 4/4/2012    Pages: 7  
Exhibit 14



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2  
3 **Q1: Please state your name, your position and your responsibilities with respect to Missouri Valley.**

4 A: My name is Mike Kilgore, and I am the General Manager/CEO for Missouri Valley  
5 Communications, Inc. ("MVC") and its parent company, Nemont Telephone Cooperative, Inc.  
6 ("Nemont"). MVC's headquarter is located in Williston, North Dakota. Nemont's headquarter  
7 is located in Scobey, Montana. I have been employed in this capacity since May of 2009.  
8 As General Manager/CEO I report to the Board of Directors and have responsibility and  
9 authority in all MVC business matters, as delegated by the board.

10 **Q2: Mr. Kilgore, what is the purpose of your testimony?**

11 A: My testimony explains MVC's position on Midcontinent's interconnection request and all of  
12 the issues identified by Midcontinent's list of issues in this proceeding, as stated on exhibit A  
13 of its petition for arbitration.

14 **Q3: What is your position on Midcontinent's interconnection request?**

15 A: My position on Midcontinent's 251(a) and 251(b) interconnection request is that it is actually  
16 a 251(b) and 251(c) interconnection request in disguise. It is not consistent with the public  
17 interest, convenience and necessity. However, MVC is required to arbitrate under FCC  
18 regulation and federal statute in order to produce an interconnection agreement which ND  
19 PSC will evaluate, and either adopt, reject, or adopt with modifications.

20 **Q4: Please explain why this interconnection agreement is not consistent with the public  
21 interest, convenience and necessity.**

22 A: MVC is the carrier of last resort in Williston exchange area. MVC has a responsibility to  
23 serve the entire 393 square mile exchange area upon reasonable requests. An  
24 interconnection agreement contemplated by this arbitration proceeding, if approved, will  
25 allow Midco to "cream skim" the high density low cost area within the exchange area, i.e., the  
26 city of Williston. MVC's loss of these customers will translate to a significant revenue loss  
27 that will impair MVC's ability to serve the entire 393 square mile exchange area. It will put  
28 MVC in a very difficult position to fulfill its carrier of last resort responsibility. The situation is  
only compounded by the explosive growth due to the recent oil industry activities.

**Q5: ~~Please set that issue aside for now and address the issues in the order listed on  
Midcontinent's Petition for Arbitration, dated November 14, 2011. What is MVC's  
position regarding general terms and conditions of an interconnection agreement?~~**

A: ~~MVC agrees with Midcontinent that the existing resale agreement be used as a rough basis  
for development of an interconnection agreement general terms and conditions. Extensive  
modifications are needed, however. In addition, MVC believes that Midcontinent should first  
build out its network to serve all customers within the Williston exchange, not just the~~

1 customers within the city limits. For consideration MVC has attached a copy of the  
2 agreement with some recommended modifications. (See attachment '1')

3 **Q6: What is MVC's position regarding other terms and conditions of interconnection and  
4 number portability?**

5 A: If required to interconnect, MVC will provide number portability in accordance with regulatory  
6 requirements and Midco's 251(b) request. There would have to be a conversion process to  
7 move customers. In the event this takes place, ~~MVC would support processing a total of five  
(5) Local Service Requests (LSR) per day and Midcontinent would be charged a processing  
8 fee of \$ 38.50 per request. This rate would be a reciprocal rate for any future customer  
9 porting from Midcontinent to MVC as well.~~

10 MVC rejects Midcontinent's proposal to use the Turtle Mountain Communications, Inc.  
11 agreement as a basis for interconnection if such is required, and proposes the parties use it  
12 only as a reference. The basis of any interconnection agreement should be one that is  
13 specifically tailored to different companies and circumstances. Attachment '1' is a template  
14 document that could be used to tailor a specific agreement between MVC and Midcontinent.

15 **Q7: What is MVC's position regarding Technical Interconnection Requirements?**

16 A: MVC proposes to interconnect via electrical T1 facilities. This is a standard, existing method  
17 of interconnection most prevalently used by MVC and would be most easily supported.

18 **Q8: What is MVC's position regarding the point of interconnection?**

19 A: MVC proposes to interconnect at its Williston Central Office located at 421 Main Street,  
20 Williston, North Dakota. This is the location of the MVC switching facility and where other  
21 common carriers have interconnection.

22 **Q9: What is MVC's position on Reciprocal compensation?**

23 A: If interconnection were to be adopted, MVC rejects Midcontinent's proposal that the parties  
24 adopt a bill and keep arrangement for reciprocal compensation for local traffic. Bill and keep  
25 methodology would not adequately compensate MVC for Midcontinent's use of MVC's  
26 facilities in the Williston exchange area.

27 **Q10: Please explain why.**

28 A: Part of the explanation appears in the FCC's description of bill and keep methodology. At  
the time Midcontinent requested interconnection under bill and keep arrangements, the  
regulation at 47 CFR 51.713 defined bill-and-keep arrangements as those in which neither of  
the two interconnecting carriers charges the other for the termination of telecommunications  
traffic that originates on the other carrier's network. Under that regulation, a state commission  
may impose bill-and-keep arrangements if the state commission determines that the amount  
of telecommunications traffic from one network to the other is roughly balanced with the  
amount of telecommunications traffic flowing in the opposite direction, and is expected to  
remain so. The known facts show that the amount of local telecommunications traffic that  
would flow between MVC and Midcontinent, if they were interconnected, is not balanced, not  
even roughly balanced, but is out of balance so that a bill and keep methodology would be

1 inappropriate.

2 **Q11: Do you believe the amount of local telecommunication traffic that would flow between**  
3 **MVC and Midcontinent will be balanced or roughly balanced?**

4 A: No, I do not believe the local telecommunication traffic between MVC and Midcontinent will  
5 be balanced or roughly balanced. Midcontinent's proposed interconnection agreement  
6 states the traffic is roughly balanced, but there is a combination of facts that would indicate  
7 the traffic would be imbalanced. The principal indicators are the number of customers  
8 affected, the facilities of the two companies, the facilities that would be interconnected, the  
9 service areas of the two companies and the customer mix in those areas. This pertains not  
10 only to the service area shared within the Midcontinent franchise area, which is roughly the  
11 seven (7) square miles generally within the city limits, but also to the roughly 386 square mile  
12 area that MVC serves that Midcontinent does not and cannot serve. (See attachment 2,  
13 Exchange Area Map)

14 **Q12: Please specify each of these sets of facts, customers, facilities, and service areas.**

15 A: The relevant service area is the entire Williston exchange area, not just in and around the  
16 city of Williston but a much larger surrounding area. The Williston exchange area comprises  
17 393 square miles. MVC, as the Incumbent Local Exchange Carrier (ILEC) is obligated by its  
18 Carrier of Last Resort (COLR) duties to provide service to all customers within the entire  
19 exchange on a nondiscriminatory basis. As of February 2012, MVC serves the entire area  
20 with 1055 route miles of lines and associated facilities from a central exchange in Williston.  
21 MVC serves 9352 access lines in the Williston exchange area which includes 2106  
22 wholesale/resale access lines provided to Midcontinent to serve customers. (See attachment  
23 3, Access Line Graph)

24 If the two companies were interconnected, Midcontinent would presumably convert these  
25 resale customers to service via Midcontinent's cable TV facilities. Midcontinent's facilities  
26 are limited to approximately 7 square miles in Williston. MVC has approximately 4 times as  
27 many access lines as Midcontinent. MVC has over 56 times the service area as that of  
28 Midcontinent. MVC has approximately 15 times as large a network, in terms of miles of line  
to serve their customers. In the area served by both companies – the area where  
Midcontinent has cable TV facilities, MVC has approximately 66% of the customers in that  
area.

We estimate Midcontinent has no customers or facilities in 82% of the Williston exchange  
area, but its customers in the small area served by Midcontinent would be able to  
communicate with MVC's customers in the area served only by MVC in addition to  
communicating with MVC's customers in the area served by both. So, the facts speak for  
themselves regarding the imbalance of local telecommunications traffic flowing between the  
two companies if they were interconnected.

29 **Q13: If interconnection were to come to fruition, what alternative reciprocal compensation**  
30 **arrangement would MVC propose and why?**

31 A: MVC would propose a reciprocal compensation rate of \$ 0.030249 per terminating minute of  
32 use. That is the rate provided in an interconnection agreement between MVC and a wireless  
33 company, in case No. PU-08-521. Under basic principles of non-discrimination, the same  
34 rate should be applied to the exchange of local telecommunications traffic between MVC and  
35

1 Midcontinent, if interconnection is required. There are lots of differences between wireline  
2 and wireless companies, but there is no significant difference when it comes to the technical  
3 matters of interconnection, so there is no reason for differences in reciprocal compensation.  
4 As we understand the transitional provisions of the FCC's 2011 reform order, this is an  
5 acceptable transitional reciprocal compensation arrangement until bill and keep is imposed  
6 on all telecommunications companies over the next several years.

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9 **Q14: Are there any other factors for consideration in choosing a method of reciprocal  
10 compensation arrangements?**

11 A: I can think of two possible future factors. One factor is related to the current oil boom in the  
12 area of North Dakota surrounding Williston.

13 **Q15: Please explain.**

14 A: Rapid population growth and related business developments have dramatically increased  
15 the demand for telecommunications services. This demand is not only within the Williston  
16 city limits, which is for the most part, the area that Midcontinent chooses to serve, but outside  
17 those limits. In many cases the increase in demand is greater outside the city limits. In the  
18 growth area outside Williston, where only MVC serves, the cost to continue to build out as  
19 MVC is required to do as the Carrier of Last Resort (COLR), especially on a per location  
20 basis, will rise significantly. Meanwhile, Midcontinent's ability to pick and choose the  
21 customers it will serve means it can control its investment in growth to those areas that  
22 Midcontinent determines will provide it a rate of return. This further supports the indicators  
23 that imbalance in traffic flow is likely to become even more skewed. Reciprocal  
24 compensation arrangements should be related to traffic flow so Midcontinent pays for its use  
25 of MVC's future investments.

26 **Q16: What is the other possible future factor?**

27 A: There is the possibility that the flow of traffic might become balanced over time. If  
28 Midcontinent's customer base were to grow it is conceivable that customer numbers of the  
two companies might become balanced. At that time if it were to come to pass, bill and keep  
might possibly be appropriate. That is commonly provided in interconnection agreements.

**Q17: Can you provide an example.**

A: Yes. The interconnection agreement in case no PU-08-521 that I referred to includes a  
provision for transition to bill and keep if traffic moves to a balance. The agreement presently  
in effect for the wireless company that is interconnected with MVC provides that the agreed  
rate applies until the local telecommunications traffic exchanged between the parties is  
balanced and falls within an agreed threshold. If the traffic balance threshold is reached,  
reciprocal compensation will be transitioned to bill and keep arrangements. Under that  
agreement, the threshold is reached when the local telecommunications traffic exchanged  
falls between 55% / 45% in either direction for three (3) consecutive months. That is in  
section 1.1 of the agreement in case PU-08-521. That arrangement was approved by the  
PSC and that arrangement is included in MVC's proposal for an appropriate reciprocal  
compensation arrangement with Midcontinent in the event interconnection were to happen.

1 **Q18: Do you have any other comments relating to the reciprocal compensation issue?**

2 A: No, not at this time.

3  
4 **Q19: What is MVC's position on Local Number Portability?**

5 A: As stated previously, MVC will provide Number Portability in accordance with regulatory  
6 requirements and Midco's 251(b) request. During the conversion process MVC can support  
7 processing a total of five (5) Local Service Requests (LSR) per day and will charge  
8 Midcontinent a processing fee of \$ 38.50 per request.

9 **Q21: What is MVC's position on compensation for non-local traffic?**

10 A: MVC rejects Midcontinent proposal to keep arrangements for non-local traffic exchanged by  
11 the parties the same as it is today. Non-local traffic, by definition, is not local traffic to be  
12 exchanged between interconnected local exchange carriers. In the situation where  
13 Midcontinent is a reseller of MVC's local exchange service in Williston, MVC is the only LEC  
14 bearing that access obligation. If Midcontinent were to become a facilities based LEC in the  
15 Williston exchange area, Midcontinent should assume the access obligation regarding its  
16 customers making and receiving non-local calls. Midcontinent's obligations regarding non-  
17 local traffic are not a feature of interconnection with MVC's local network. For the purpose of  
18 this agreement local traffic includes traffic from/to locations within the Williston Exchange.  
19 Local traffic does not include current or future areas that MVC may include or exclude from  
20 its defined Extended Area Service (EAS). Local traffic does not include current or future  
21 interconnection agreements MVC has with other carriers.

22 **Q22: What is MVC's position regarding the date of interconnection?**

23 A: ~~If MVC is obligated to interconnect, MVC proposes that interconnection should be completed~~  
24 ~~within 180 days after an interconnection agreement is approved by the PSC under section~~  
25 ~~252 of the Telecommunications Act, and only after either Midcontinent builds its network out~~  
26 ~~to serve the entire exchange area with an important exception. Even if the terms of an~~  
27 ~~interconnection agreement are determined, the basic question remains whether MVC is~~  
28 ~~obliged to interconnect. The Commission's decision on that issue might be appealed. So,~~  
~~interconnection should not be implemented unless and until the PSC's decision is upheld by~~  
~~judicial review~~

**Q23: ~~What is MVC's position regarding the transition from the current resale arrangement,~~**  
**~~specifically the transition period?~~**

A: ~~MVC agrees that transition of Midcontinent's resale customers should be accomplished in a~~  
~~timely fashion if interconnection is directed. But processing capacity and capability must be~~  
~~taken into account. The timeframe for completion of the transition will be a function of the~~  
~~processing limits of all involved entities. For Missouri Valley, this has been addressed as~~  
~~part of the LSR topic. MVC can process five (5) LSRs per day which equates to 421~~  
~~business days to process the current, as of this writing, 2,106 Midcontinent customers. This~~

1 timeframe will be extended to the extent new customer ports are requested as part of the five  
2 per day limit.

3 **Q24: What is MVC's position regarding transitional financial compensation?**

4 A: ~~MVC proposes that if it were forced to interconnect with Midcontinent, the wholesale discount~~  
5 ~~currently offered to Midcontinent shall be discontinued effective the same date as the new~~  
6 ~~interconnect agreement in order to help lessen the adverse financial impact on MVC. (See~~  
7 ~~attachment 4, Impact Analysis) All services Midcontinent purchases from MVC and resells to~~  
8 ~~Midcontinent's customers will be billed to Midcontinent according to MVC local service tariff~~  
9 ~~filed with the ND PSC. MVC rejects Midcontinent's proposal that Midcontinent pay to MVC~~  
10 ~~75% of access charges attributable to each customer switched from resale to facilities based~~  
11 ~~service for a period of six months after a change occurs. MVC believes the transitional~~  
12 ~~financial assistance should include both intrastate access and local revenue impacts and be~~  
13 ~~provided for a longer period of time. Alternatively, since MVC is a regulated rate of return~~  
14 ~~carrier, the transitional compensation may be based on calculated per line revenue~~  
15 ~~requirement. Doing so will better allow MVC to meet its COLR responsibilities to serve the~~  
16 ~~entire 393 square mile exchange area where approximately 386 of which Midcontinent does~~  
17 ~~not and cannot serve;~~

18 **Q26: Does this conclude your testimony on the issues?**

19 A: Yes.  
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