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April 20, 2012

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PUBLIC SERVICE COMMISSION

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 the following:

1. Post-Hearing Brief of Midcontinent Communications;
2. Recommended Decision;
3. Proposed Interconnection Agreement; and
4. Affidavit of Service.

This document is also being transmitted electronically to your office. Also enclosed is a first page to each document 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

60 PU-11-697 Filed: 4/23/2012 Pages: 119

Post-hearing Brief, Recommended Decision,
proposed Interconnection Agreement

Midcontinent Communications

Zachary Pelham, Pearce & Durick

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.)	

POST-HEARING BRIEF OF MIDCONTINENT COMMUNICATIONS

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April 20, 2012

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Effective Date of the Interconnection Agreement Should Be the Date It Is Approved.....	4
III.	Impasses as to Points of Interconnection Should Be Subject to the Agreement’s Dispute Resolution Provisions.....	6
IV.	Midcontinent’s Position on Reciprocal Compensation Should Be Adopted.....	7
	A. Bill and Keep Should Be Adopted as the Mechanism for Reciprocal Compensation.....	8
	B. If Bill and Keep Is Not Adopted, the Rate Should Be No More than \$0.004/minute and Should Ramp Down to Bill and Keep Over Time.....	11
	C. Missouri Valley Will Not Be Harmed by Adopting a Rate that is Consistent with the FCC’s Rules.....	15
V.	The Interconnection Agreement Should Include Language Accounting for ISP-Bound Traffic.....	16
VI.	Standard Access Charges Should Apply for Termination of Toll Traffic.....	17
VII.	Midcontinent’s Proposal for Calculating Transition Payments Should Be Adopted.....	18
VIII.	The Agreement Should Contain Language that Ensures that Neither Party Can Evade Its Obligations to Transfer Customers.....	19
IX.	Administrative Charges for Customer Changes Should Be Set No Higher than Under the Current Resale Agreement.....	21
X.	Issues Concerning the Financial Impact of Facilities-Based Interconnection on Missouri Valley Can Be Considered in this Proceeding Only for Extremely Limited Purposes.....	23
XI.	There Is No Basis for Granting a Stay of Implementation of the Interconnection Agreement.....	27
	A. There Is No Reason to Consider a Stay Request in the Context of an Arbitration Recommendation.....	27
	B. There Will Be No Basis for Granting a Stay.....	29
XII.	Conclusion.....	34

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POST-HEARING BRIEF OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications (“Midcontinent”), by its attorneys, hereby submits its post-hearing brief in the arbitration for an interconnection agreement between Midcontinent and Missouri Valley Communications, Inc. (“Missouri Valley”).

I. Introduction

This arbitration addresses an extremely limited number of open issues identified by the parties and the arbitrator prior to the arbitration hearing. The most significant of these issues concern the effective date of the agreement; reciprocal compensation for termination of local traffic; and the costs and timing associated with changing a customer from one carrier to another, but there are several other issues as well. For the reasons described below, the recommended decision in this proceeding and, ultimately, the Commission’s order adopting an interconnection agreement, should accept each of Midcontinent’s positions on the issues. Those positions, in the order they would appear in the final interconnection agreement, are as follows:

- **Effective date of the agreement:** The agreement should be effective immediately upon approval by the Commission, unless a stay is granted by the Commission or the federal District Court. The only reason Missouri Valley seeks this provision is to delay implementation for an unreasonable time. A provision that recognizes the possibility of a stay gives Missouri Valley sufficient protection against any harm it could suffer as the result of an improper decision in this proceeding.
- **Dispute resolution for disputes concerning points of interconnection:** Missouri Valley's proposal to add language exempting such disputes from the standard dispute resolution provisions should be rejected because an exemption would create uncertainty and potentially prevent resolution of such disputes.
- **Reciprocal compensation for termination of local traffic:** The agreement should adopt bill-and-keep compensation, because doing so would be consistent with the FCC's current intercarrier compensation rules, because the carriers that currently interconnect with Missouri Valley will be paying that rate as of July 1, 2012, because the actual costs of termination are very small and because there is no competent evidence to indicate that traffic will not be substantially in balance. If a specific rate for compensation is adopted rather than bill-and-keep compensation, the rate should be no greater than \$0.004/minute because the evidence shows that is a reasonable rate in light of other carriers' costs in North Dakota and around the country. This rate should be ramped down to bill-and-keep compensation over a four year period and should not be paid unless traffic is out of balance by more than a 60/40 ratio.
- **Compensation for ISP-bound traffic:** Some provision for ISP-bound traffic is necessary because a Missouri Valley affiliate provides dial-up Internet access in Williston. Compensation for this traffic should be set at the same rate adopted for termination of local traffic. If that rate is not used, the rate should be set to \$0.0007, consistent with the FCC's rules.
- **Compensation for non-local traffic:** Midcontinent is willing to accept Missouri Valley's deletion of the provisions governing access traffic so long as such traffic is subject to the parties' access tariffs. However, it also would be appropriate to retain the language proposed initially by Midcontinent. In any event, it is necessary for the parties to know how to determine what they must pay for access traffic.
- **Determination of amount of transitional compensation:** Midcontinent's proposal to base transitional compensation payments on the access charges paid by the average resale customer prior to the start of the transition should be adopted because it is less complex and creates certainty for the parties. Missouri Valley's proposal to do individual calculations for each transitioned customer is unnecessary and adds a level of complexity with no concomitant benefits.
- **Obligations to transfer customers:** There are two components to this issue. First, Missouri Valley's proposed language limiting its obligations to those necessary to disconnect customers should be modified to ensure that the parties comply with their federally mandated number portability obligations. Second, the proposed provision that would limit the obligation of Missouri Valley to complete customer changeovers when there are scheduling conflicts should be modified to ensure that Missouri Valley

remains obligated to complete the customer transition within a twelve month period. These changes are necessary to address incentives for Missouri Valley to slow the transition to a standstill and the evidence shows that there is no reason that Missouri Valley cannot complete changeovers in a timely fashion.

- **Charges for implementing carrier changes:** Missouri Valley's proposal to adopt a charge that is more than 50% greater than the charge under the current resale agreement should be rejected. The evidence shows that Missouri Valley's cost estimates are not based on incremental cost, that Missouri Valley has not attempted to impose any charge on other carriers and that Missouri Valley's proposed charge is far in excess of the chargers under other rural carriers' interconnection agreements.

The parties also have been asked to address two sets of issues that are not specifically related to the terms and conditions of the agreement. The first set of issues concerns the extent to which the potential financial impact of interconnection and competition can be considered in this proceeding and whether there is any ability to use this proceeding to make Missouri Valley "whole" for the impact of competition. As described in more detail below, these issues are outside the scope of this proceeding, and cannot be considered. Considering such issues would be contrary to the requirements of the federal Communications Act and, in particular, attempting to require Midcontinent to compensate Missouri Valley for lost profits or revenues would be contrary to a specific FCC ruling. Equally important, Missouri Valley has ample opportunity to seek any relief it might require through existing mechanisms other than this proceeding.

The other issues concern the ability of an arbitrator to issue or recommend a stay. There is no provision under North Dakota law that would permit such an action, and in any event a stay request as to a recommended decision that is subject to Commission review before adoption would be incurably premature. Moreover, there would be no substantive basis to grant Missouri Valley a stay at this time, as it would be impossible for Missouri Valley to satisfy the four-factor test for granting a stay.

This brief is one of three documents that Midcontinent is filing concurrently in this proceeding. It also is filing a proposed recommended decision and a proposed interconnection

agreement. The interconnection agreement highlights the language on disputed issues and includes Midcontinent's recommended resolutions of those issues. This brief will refer to the specific provisions of the proposed interconnection agreement as each disputed issue is addressed.

II. The Effective Date of the Interconnection Agreement Should Be the Date It Is Approved.

Midcontinent's proposed interconnection agreement would become effective the day it is approved by the Commission.¹ Missouri Valley proposes to adopt language that would push out the effective date to the end of any appeals that might be filed by one party or another.

Midcontinent's proposal is the standard approach in interconnection agreements in North Dakota and would not prevent Missouri Valley from delaying implementation if it could meet the standards for obtaining a stay.² Consequently, it should be adopted.

There is little doubt that Missouri Valley's proposal is intended to delay implementation of the agreement while Missouri Valley pursues an appeal. This is clear from the language Missouri Valley has proposed and from Mr. Kilgore's testimony.³ The language proposed by Missouri Valley would put control of the effective date of the agreement in the hands of Missouri Valley, which has a strong interest, expressed quite clearly during the hearing, in as much delay as possible. Therefore, Missouri Valley would have an incentive to pursue years of appeals – even to the Supreme Court – regardless of the likelihood of success.⁴

¹ Midcontinent's proposed language appears in Sections 1.1 and 2.1 of the General Terms and Conditions of its proposed agreement.

² As described below, Missouri Valley is unlikely to obtain a stay because it is unlikely to be able to demonstrate that any appeal is meritorious.

³ See Exhibit 22, Attachment at 2, 4 (description of Missouri Valley's proposed change to effective date language); Tr. at 203-04 (Kilgore live direct).

⁴ Since any appeal of the arbitration decision would go first to federal district court, then the U.S. Court of Appeals, it easily could be years before an appeal is resolved, even if Missouri Valley did not take advantage of its rights to seek reconsideration, *en banc* consideration or Supreme Court review.

Missouri Valley's proposal also would lead to nonsensical results. As Mr. Simmons explained in his prefiled direct testimony:

. . . Missouri Valley's provision would delay implementation of the entire agreement even if only one part of the Commission's order approving the agreement was appealed. In other words an appeal of the specific reciprocal compensation rate would delay implementation even if Missouri Valley did not appeal the agreement as a whole.⁵

In addition, delays caused by Missouri Valley's proposal would delay the public interest benefits that come from facilities-based competition and would harm Midcontinent. Again, Mr. Simmons explained these concerns:

[I]f the agreement cannot be effective until all appeals are completed, Midcontinent will be forced to deal with the delays in installations and the maintenance and repair problems discussed above for a much longer period. This will harm Midcontinent and its customers.

Third, as mentioned above, Midcontinent is about to make a substantial investment in the Williston market by constructing new fiber facilities. If the agreement is not in effect during any appeal, Midcontinent's investment will lie fallow during this time. While Midcontinent recognizes that there always is a risk in such cases, there is no reasons to make Midcontinent bear that risk unless a stay is granted.⁶

Moreover, the language Missouri Valley has proposed would be unique in North Dakota. As Mr. Kilgore acknowledged during the hearing, it does not appear in either of Missouri Valley's existing interconnection agreements.⁷ It also does not appear in any of Midcontinent's other agreements in North Dakota, and likely does not appear in any North Dakota interconnection agreement.

The reason that Missouri Valley's proposed language does not appear in any agreements is that the law already provides an appropriate remedy if Missouri Valley believes it will be harmed by an incorrect decision in this proceeding – it can seek a stay from the Commission and from the federal District Court. As described below, the stay process provides a rigorous

⁵ Simmons Direct at 16-17.

⁶ *Id.* at 17.

⁷ Tr. at 250-51 (Kilgore cross-examination).

analysis of the impact of an arbitration decision and the likelihood it will be reversed.⁸ The stay process also properly places the burden on the party that seeks to prevent the interconnection agreement from going into effect. Otherwise, the Congressional intent to ensure that arbitration proceedings would be completed expeditiously and that competition would begin promptly after an arbitration is completed would be upset.⁹ Consequently, it would be inappropriate to shift this burden by adopting Missouri Valley's proposed language.

III. Impasses as to Points of Interconnection Should Be Subject to the Agreement's Dispute Resolution Provisions.

The dispute resolution issue is limited in scope: Missouri Valley's proposal is not to have any provision governing disputes about points of interconnection, while Midcontinent would apply the same process to those disputes as to any other disputes.¹⁰ Midcontinent's position should be adopted.

While the issue is limited in scope, it is real, and directly affects the interconnection between the parties. The parties have agreed on an initial point of interconnection, at Missouri Valley's switch, and the agreement is intended to be in place for many years. If there is a need to change the point of interconnection in the future (for instance, if the parties move to Internet Protocol-based interconnection, as the FCC anticipates will occur over the next decade), or if there is a need to modify or add other points of interconnection, they will need to agree on the specific terms for that new interconnection.

Under Midcontinent's proposal, disagreements over how to accomplish a new or modified interconnection would be governed by the standard dispute resolution procedure. This

⁸ See *infra* Section X.

⁹ See 47 U.S.C. § 252 (setting process and timelines for completion of arbitration proceedings, including 9-month period for negotiation and arbitration and 30-day period for approval of arbitrated agreements).

¹⁰ See Exhibit 22, Attachment at 6. Missouri Valley would add a new Section 2.11 to the Interconnection Attachment to the interconnection agreement. Midcontinent's proposed agreement shows where Missouri Valley would add that language, on page 6 of the attachment, but does not include it.

is the most logical approach. That provision is the same as the provision in the parties' current resale agreement and is similar to provisions in other agreements throughout the state. It provides for informal processes before either party can seek a formal resolution, thus reducing the chance that litigation will occur. It also provides certainty in the event of a dispute, so there is no doubt as to how to proceed.

Under Missouri Valley's approach, it is not at all certain what would happen if a dispute arose. While it may be Missouri Valley's intent that an impasse would left unresolved, in practice it is not clear that would be the case (and even if it were the case, it is not apparent it would be desirable for either party). More likely, one party or the other would seek relief from the Commission, but there simply is no reason to create any uncertainty or to create the possibility that there would be no way to resolve a dispute. For these reasons, Midcontinent's proposal should be adopted.

IV. Midcontinent's Position on Reciprocal Compensation Should Be Adopted.

The parties' disagreement over reciprocal compensation for local traffic has two elements: First, Midcontinent proposes that the parties adopt bill and keep compensation, and Missouri Valley proposes that a reciprocal compensation rate be set. Second, if bill and keep is not adopted, Missouri Valley proposes a reciprocal compensation rate of slightly more than 3 cents a minute, based on rates in negotiated agreements, while Midcontinent proposes rates that would be consistent with the pricing standards in the Communications Act and the FCC's rules. For the reasons described below, bill and keep rates should be adopted, but if they are not, there is no basis to adopt any rate higher than \$0.004/minute, with a ramp down to bill and keep.¹¹

¹¹ Midcontinent's proposed language on intercarrier compensation appears on pages 7 and 8 of the Interconnection Attachment to Midcontinent's proposed interconnection agreement. Because the specific language to be used depends on whether bill-and-keep compensation is adopted, Midcontinent has provided two versions of the compensation language. Midcontinent notes that the agreement refers to "Local/EAS" traffic rather than just to local traffic. This is the language contained in the document that Midcontinent provided to Missouri Valley, and

A. Bill and Keep Should Be Adopted as the Mechanism for Reciprocal Compensation.

As was described during the testimony of Chad Duval for Missouri Valley, the FCC's current rules provide two choices for reciprocal compensation rates set via arbitration:

An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

- (i) The forward-looking economic costs of such offerings, using a cost study pursuant to § § 51.505 and 51.511; or
- (ii) A bill-and-keep arrangement, as provided in § 51.713.¹²

These rules apply to any reciprocal compensation rates set after December 29, 2011, and therefore apply to this proceeding. Under these rules, if a cost study has not been prepared, the only permissible choice is to adopt a bill-and-keep arrangement.

In this case, there is no cost study. Missouri Valley acknowledged as much in its discovery responses and during the hearing.¹³ Indeed, the only support that Missouri Valley provided for its proposed rate was that it is charging the same rate under two agreements with wireless companies. However, the testimony established that those rates no longer will be charged as of July 1, 2012 because of changes under the FCC's intercarrier compensation/universal service order, and that the new arrangement for those carriers will be bill and keep.¹⁴

The testimony establishes that there are good reasons why bill and keep compensation is the most appropriate choice. As Mr. Gates explained, the FCC has adopted bill and keep as the long term approach to all forms of intercarrier compensation for several reasons:

that Missouri Valley accepted (other than as to the specific disputed issues). As described during the hearing, however, Midcontinent does not require EAS from Missouri Valley, and would not object to having those references removed from the agreement.

¹² 47 C.F.R. § 51.705(b)(2); see Duval Supplemental Testimony at 4.

¹³ See Exhibit 10 (discovery response stating that there are no studies, report and other documents that support the reciprocal compensation rate proposed by Missouri Valley); Tr. at 271-2 (Kilgore cross-examination) ("Q. So you did not prepare any reports to support the rate that you proposed based on its costs? A. I don't believe that I did.")

¹⁴ 47 C.F.R. § 51.705(a); see Tr. at 126-7 (Gates); Tr. at 267-68 (Kilgore).

The FCC also noted that “A bill-and-keep methodology also imposes fewer regulatory burdens and reduces arbitrage and competitive distortions inherent in the current system, eliminating carriers’ ability to shift network costs to competitors and their customers.”¹⁵

* * *

The FCC has concluded, “...that the incremental cost of call termination is very nearly zero...” The FCC goes on to state that the low or zero cost, “...coupled with the difficulty of appropriately setting an efficient, positive intercarrier compensation charge, further supports our adoption of bill-and-keep.” Even if the costs are more than zero, the Act “...does not entitle each carrier to recover those costs from another carrier, so long as it can recover those costs from its own end users and explicit universal service support where necessary.”¹⁶

Even with very low incremental costs to terminate traffic, there might be reason to adopt a specific rate for termination if there was evidence that traffic will not be balanced. However, the record does not contain any competent evidence to that effect. Missouri Valley’s claims that traffic will not be balanced did not stand scrutiny. As Mr. Kilgore acknowledged during cross examination, the factors cited in his direct testimony, including the number of customers served, the size of a carrier’s network, the land area served by the network and the facilities used to interconnect do not by themselves determine whether traffic is in balance.¹⁷ All that matters is the number of minutes that one carrier sends to the other.¹⁸

Mr. Duval provided what he described as “a simple analysis” to demonstrate that traffic would not be balanced, but that analysis also did not prove anything.¹⁹ First, as Exhibit 4 demonstrates, Mr. Duval’s analysis is highly dependent on specific assumptions that he made: That business and residential customers terminate different numbers of minutes; that the 3:1 ratio that he chose for his chart is accurate; that the current imbalance between business and

¹⁵ Gates Direct at 45, quoting Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17904 (*USF/ICC Transformation Order*)

¹⁶ Gates Direct at 46, quoting *USF/ICC Transformation Order* at 17904 (footnotes omitted).

¹⁷ Tr. at 275-83 (Kilgore cross-examination).

¹⁸ *Id.* at 275. (Kilgore cross-examination). The testimony further established that, when Missouri Valley is required to expend unusual amounts of money to construct facilities to serve distant customers, it is entitled to receive – and does in fact receive – payments to cover those costs. *Id.* at 285-88 (Kilgore cross-examination); Exhibit 5 (list of instances in which Missouri Valley received reimbursements for line extensions).

¹⁹ Duval Direct at 6-7, Attachment 1. Attachment 1 was admitted as Exhibit 19.

residential customers will remain after Midcontinent begins to provide facilities-based service; and that Midcontinent will serve the same percentage of all customers that it does today under the resale arrangement. As Mr. Duval acknowledged during his testimony, changes to these assumptions change the balance of traffic.²⁰ Mr. Duval also acknowledged that amounts due under his analysis are “[v]ery sensitive to the recip comp rate as well as the balance of traffic, and he provided no studies to support his assumptions.”²¹

It also is significant that Mr. Duval’s analysis uses minutes to calculate total traffic, but then uses lines to calculate the balance of traffic.²² However, this is comparing apples and oranges – callers do not originate and terminate lines, but originate and terminate minutes. As a result, Mr. Duval’s analysis includes the larger number of minutes associated with business customers in the calculation of the total minutes terminated by each carrier, but does not account for that higher level of network usage when determining whether traffic is in balance. If, instead, the relative number of minutes terminated by each carrier in Mr. Duval’s example is used, each carrier terminates the same number of minutes originated by the other carrier.²³ Thus, neither Mr. Kilgore nor Mr. Duval provided any reason to think that traffic will not be in balance.

Indeed, even if traffic were not in balance and the reciprocal compensation rate were set in accordance with the FCC’s rules, it is unlikely that either company would have to pay a material amount to the other. At a rate of \$0.004/minute, the monthly imbalance would have to

²⁰ Tr. at 347-352 (Duval cross-examination). It is particularly noteworthy that there is no empirical evidence in this proceeding for the proposition that, on average, business customers terminate more minutes of local traffic than residential customers. Neither Mr. Duval nor Mr. Kilgore could provide any substantiation for this assumption when asked during their testimony. Tr. at 273 (Kilgore cross-examination) (Q: During your live testimony you indicated you believe that calls are mostly made to businesses. A: I believe that’s true. Q. Have you done any studies on that in Williston? A: No, I believe it’s true.”), 348-49 (Duval cross-examination).

²¹ Tr. at 353 (Duval cross-examination).

²² Duval Direct at 6 (“Because MVC serves 78% of all lines, it is assumed that 78% of all traffic terminates on MVC’s network . . . Midcontinent serves approximately 22% of all lines, so it is also assumed that 22% of all traffic would terminate on Midcontinent’s network . . .”).

²³ This calculation is shown in Attachment 1 to this brief.

amount to 25,000 minutes – or about half an hour per current Missouri Valley customer – before the amount owed would reach \$100 a month. The amount paid likely would not cover the additional costs of determining what is owed, billing that amount and collecting it. This is another, independent reason to adopt bill and keep.

Finally, Midcontinent submits that there is no need to conduct a traffic study to determine whether traffic is in balance. Most significantly, under the current FCC rules traffic balance is not a consideration in deciding whether to adopt bill-and-keep compensation, and so a traffic study would not assist in meeting FCC requirements. At the same time, a traffic study conducted today will say very little about whether traffic in Williston will be in balance even a few months after interconnection is in place, as both Midcontinent and Missouri Valley likely will have shifts in their customer bases resulting from competition between the companies. Moreover, there is little reason to go to the expense of conducting such a study if there is no specific reason to believe traffic is not in balance, particularly when, as noted above, the likelihood is that the total amount of compensation to be paid in the event traffic was not in balance would be very low.

B. If Bill and Keep Is Not Adopted, the Rate Should Be No More than \$0.004/minute and Should Ramp Down to Bill and Keep Over Time.

For the reasons described above, the appropriate compensation mechanism is bill and keep, and that is the result most consistent with the FCC's rules in the absence of a cost study conducted under the FCC's rules. However, if bill and keep is not adopted, the evidence in this proceeding demonstrates that the maximum rate that would be reasonable in the absence of bill and keep is \$0.004 per minute of use, with a ramp down to bill and keep over time.

First, all of the evidence on the maximum actual cost of transport and termination supports a \$0.004/minute maximum rate. As Mr. Gates showed in his prefiled direct testimony, on a national level rates for transport and termination determined through cost studies rarely

exceed this level. In North Dakota, for instance, the Qwest rate is \$0.0035/minute, and that rate includes tandem switching, which Missouri Valley will not provide. The composite national rate is much lower than \$0.004/minute – about \$0.002/minute.²⁴

Similarly, Midcontinent's existing rates for reciprocal compensation are much more consistent with a rate of \$0.004/minute than with Missouri Valley's proposed rate. The average among the 15 carriers that interconnect with Midcontinent is \$0.0041/minute.²⁵ While, as indicated during the hearing, individual negotiated rates are not a reliable indicator of costs, an average across many North Dakota carriers suggests a reasonable price level, particularly because transport and termination costs are incremental costs that are not likely to vary based on the specifics of individual companies' networks.

A rate of \$0.004/minute also is consistent with the default proxies under the FCC's old rules. As Mr. Duval testified during the hearing, the FCC set a range for the proxy rates, from \$0.002/minute to \$0.004/minute for switching to "allow[] for some variance in what those costs would be."²⁶ Thus, the \$0.004/minute rate represents the most that the FCC believed it would cost any carrier to provide termination. Further, as Mr. Duval also explained, "termination" covers all of the costs from the point a call reaches the terminating carrier's switch to the customer's location. In this case, where interconnection will be just outside Missouri Valley's door, that means that the transport component of reciprocal compensation will be negligible.²⁷

²⁴ Gates Direct at 34-37.

²⁵ *Id.* at 37-40.

²⁶ Tr. at 342 (Duval cross-examination).

²⁷ *Id.* at 344 (Duval cross-examination) ("typically if it's at or within the central office, then there would be no mileage").

There is, on the other hand, no record evidence to support Missouri Valley's proposed rate. As describe above, Missouri Valley did not conduct a cost study to support its proposal.²⁸ Instead, the entire basis for Missouri Valley's proposed rate is that it is the same rate applied in two existing wireless agreements and that adopting the same rate for Midcontinent is appropriate "[u]nder basic principles of non-discrimination."²⁹

There are three problems with this argument. The first is that, as of July 1, 2012, neither Verizon Wireless nor Sagebrush Cellular will be paying \$0.030249/minute for reciprocal compensation, because they both will be operating under a bill and keep regime. As a result, under Missouri Valley's non-discrimination principle, the appropriate rate for Midcontinent would, in fact, be zero.

The second problem is that both of these agreements were entered into voluntarily, without an arbitration or even a cost study.³⁰ Under Section 251(d)(2) of the Communications Act, these voluntary agreements are not evidence of Missouri Valley's cost of providing transport and termination.³¹

Finally, as discussed by Mr. Gates, wireless providers are not similarly situated to landline providers. The local calling area for wireless service under these agreements includes most of North Dakota, South Dakota, Minnesota and part of Wisconsin, compared to the much smaller area of the Williston exchange, and the technology used for transport and termination of wireless calls is different from that used to transport and terminate landline calls. As a result, the

²⁸ Midcontinent also did not conduct a cost study, but all of the information necessary to conduct such a study is in Missouri Valley's hands. For that reason, it is typical in arbitrations for the incumbent carrier to produce a cost study and for the competitive carrier to review that study for errors and omissions.

²⁹ Kilgore Direct at 3-4; *see also* Tr. at 272 (Kilgore cross-examination) ("Q. So the sole basis really is that you're charging other people this rate? A. Based upon the existing agreements that we have.").

³⁰ *Id.* (Kilgore cross-examination) (agreements were voluntarily negotiated and not based on cost studies).

³¹ 47 U.S.C. § 252(d)(2); *see also* Tr. at 345-46 (Duval cross-examination) .

only competent evidence of the likely costs of wireline reciprocal compensation was provided by Midcontinent.

If a rate for reciprocal compensation is adopted, it also should be subject to a ramp down over time. As a matter of law, some ramp down is required, as the FCC's rules contemplate that all terminating intercarrier compensation rates will be set at bill and keep by July 1, 2020.³² Thus, at a minimum, the agreement should contain language requiring compliance with FCC rules governing maximum reciprocal compensation rates.

However, it also would be appropriate to adopt a shorter ramp down period in light of the unnecessary burden that paying any reciprocal compensation would place on Midcontinent. Midcontinent would propose a period of no more than four years, ending no later than July 1, 2016.³³

Finally, if a rate is adopted, compensation should be bound by a collar that requires payment only when there is significant traffic imbalance between the parties, as measured by minutes of use. Missouri Valley has proposed that compensation would be paid when the imbalance exceeds 55/45. Midcontinent would propose 60/40 instead. A 55/45 collar would require payment in too many instances in which there had been random variation in traffic, and the amounts to be paid under a 55/45 collar likely would nonmaterial in most cases. If the collar is 60/40, it is more likely that payment will result only from real, persistent imbalances, and that the amount owed will be large enough to be worth the trouble of calculating, billing and collecting.

³² 47 C.F.R. § 51.909. Midcontinent's proposed agreement contains language requiring compliance with FCC intercarrier compensation rules.

³³ Thus, if an initial rate of \$0.004/minute were adopted, that rate would be charged until June 30, 2013, then \$0.003/minute would be charged until June 30, 2014, \$0.002/minute would be charged until June 30, 2015, and \$0.001/minute would be charged until June 30, 2016, with bill and keep beginning on July 1, 2016.

C. Missouri Valley Will Not Be Harmed by Adopting a Rate that is Consistent with the FCC's Rules.

Section 252(d)(2) and the FCC's rules specifically limit the factors that can be considered when setting a reciprocal compensation rate in an arbitration. Under those provisions, only incremental costs of transport and termination are to be considered. Nevertheless, Missouri Valley has sought to suggest in this proceeding that other factors related to its revenues and profits should be considered. As shown below, even if such factors were considered, under the FCC's rules the specific amount of reciprocal compensation received by Missouri Valley will have no effect on its total intercarrier compensation revenues.³⁴

Missouri Valley will not be harmed by setting the reciprocal compensation rate to bill and keep or a cost-based level because the FCC's new intercarrier compensation rules set the total amount of compensation that Missouri Valley can receive, regardless of the source of that compensation. As a result, the amount of reciprocal compensation revenue received by Missouri Valley from Midcontinent (or, for that matter, the amount of reciprocal compensation payments from Missouri Valley to Midcontinent) will have no effect on Missouri Valley's revenues.

As explained by Mr. Gates and confirmed by Mr. Duval, the FCC's new access recovery mechanism for rural carriers like Missouri Valley sets a baseline for intercarrier compensation, using 2011 revenues.³⁵ That baseline, which now has been set, cannot be changed based on revenues received in later years. Instead, the FCC will ensure that carriers receive the amount permitted by the baseline, less automatic annual adjustments, from the combination of the carriers' access revenues, reciprocal compensation revenues, new end user "access recovery

³⁴ By addressing this point, Midcontinent does not concede that there is any basis to consider these claims in this proceeding. Indeed, such claims fall within the scope of Midcontinent's April 1 motion to strike, which was granted.

³⁵ Gates Direct at 54-55; Tr. at 358-60 (Duval cross-examination).

charges” and support from the federal universal service fund.³⁶ If intercarrier compensation revenues go up, support from the federal universal service fund will go down; if intercarrier compensation revenues go down, support from the federal universal service fund will go up.³⁷

As a result, Missouri Valley will be entirely unaffected by the rate adopted for reciprocal compensation in this proceeding. Midcontinent, on the other hand, could be harmed if it is forced to pay excessive, non-cost-based rates to terminate traffic to Missouri Valley. Unlike Missouri Valley, Midcontinent is not eligible to receive support from the federal universal service fund for any changes in intercarrier compensation. As a result, if rates are set higher than forward looking economic cost, Midcontinent will incur unnecessary costs that could affect the rates it can charge its customers and its profitability in the Williston market. Since higher rates would not benefit Missouri Valley, there is no reason to require Midcontinent to pay them.

V. The Interconnection Agreement Should Include Language Accounting for ISP-Bound Traffic.

The question of whether the agreement should include language governing compensation for traffic going to Internet service providers (“ISPs”) is not as significant as some of the other questions in this proceeding. Both parties agree that dial-up Internet service no longer is nearly as important as it was ten years ago. Nevertheless, it should be addressed because failure to do so will create uncertainty and because a Missouri Valley affiliate does provide dial-up Internet access in Williston.³⁸

³⁶ Gates Direct at 54-60; Tr. at 360-63 (Duval cross-examination).

³⁷ Tr. at 169-70 (Gates examination by arbitrator) (“So even if their reciprocal compensation from 2011 goes to zero, even if their access charges go to zero, even if they lose a thousand lines in the first year after last year, they’re still going to get 95 percent of those intercarrier comp revenues.”). In this case, because Missouri Valley did not receive any reciprocal compensation revenues from Midcontinent in 2011, any reciprocal compensation will reduce Missouri Valley’s support from the universal service fund.

³⁸ Tr. at 290 (Kilgore cross-examination) (“Q: Are you aware of any dial-up providers in Williston? Is AOL there? A: Not that I’m aware of, AOL. Nemont Communications, Inc., has dial-up access service there.”)

There are three choices as to how to address compensation for termination of ISP-bound traffic. First, if bill-and-keep compensation is adopted for local traffic, the same regime could be applied to ISP-bound traffic. Second, if a specific rate is adopted for local traffic, the same rate could be applied to ISP-bound traffic. Third, the FCC-mandated maximum rate of \$0.0007/minute for ISP-bound traffic could be adopted.³⁹

Midcontinent believes that any of these choices would be acceptable. However, adopting the same compensation for ISP-bound traffic as for local traffic, either via bill-and-keep compensation or at a specified rate, would be administratively simpler than adopting a separate rate of \$0.0007 for ISP-bound traffic. Given the small volume of ISP-bound traffic that is likely to be exchanged, the reduced administrative burden of not having to account separately for ISP-bound traffic is almost certain to more than make up for any lost intercarrier compensation revenues that either party might receive.

VI. Standard Access Charges Should Apply for Termination of Toll Traffic.

At the close of the hearing, the parties were asked to address the question of how to account for access traffic sent from one party to the other (that is, the termination of toll calls, as opposed to local calls). Midcontinent's position is that the parties should be required to pay standard access charges for such traffic, and that the charges should be set by the terminating party's access tariff.

While it is customary for parties to include language to this effect in their interconnection agreements, and while Midcontinent initially proposed such language, it is not required by any rule. Consequently, Midcontinent would not object to omitting specific references to payments for access traffic in the final agreement. However, to the extent that such language is desirable,

³⁹ Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (2001). Midcontinent's proposed language on compensation for ISP-bound traffic appears on pages 7 and 8 of the Interconnection Attachment to its proposed agreement. Midcontinent also has included specific references to ISP-bound traffic where appropriate in other portions of the agreement.

Midcontinent has included the original proposal in the draft interconnection agreement that is being submitted with this brief.⁴⁰

VII. Midcontinent's Proposal for Calculating Transition Payments Should Be Adopted.

There is only one open issue as to the transition payments under the agreement. That issue is whether the per-customer payment should be set at the outset of the transition period or calculated on a per-customer basis during the transition period.⁴¹

Midcontinent proposes that the calculation be made at the beginning of the transition period. This is appropriate for several reasons, as outlined by Mr. Gates:

I recommend that the Commission adopt Midcontinent's proposal as it is administratively efficient, should result in almost identical revenues for Missouri Valley, and provides certainty for the providers and for customers impacted by the conversion.⁴²

Both administrative efficiency and certainty support adopting Midcontinent's proposal.

If the specific per-customer access revenues must be calculated each time a customer is transferred, both Missouri Valley and Midcontinent will have significantly greater burdens – Missouri Valley in calculating the per-customer revenues and in determining whether Midcontinent has reflected those revenues correctly in its payments, and Midcontinent in determining what the payments have to be each month for each individual customer. Setting the payment level at the outset will free both providers of these burdens, and since it will be based on the average of all transferred customers, the total amount to be paid should be very close to what would be paid under Missouri Valley's proposal. As a result, there is no meaningful benefit to the Missouri Valley proposal that would overcome the additional costs it would impose.

⁴⁰ This language appears on page 7 of the Interconnection Attachment and is shown in brackets and italics.

⁴¹ Midcontinent's proposed language on this issue is contained in Section 3.6 of the Interconnection Attachment to the proposed agreement, on pages 8 and 9.

⁴² Gates Direct at 51.

Midcontinent notes that, based on the information provided in Mr. Kilgore's testimony, the approximate amount of access revenue per Midcontinent customer per month is \$5.55. Under the formula agreed to by the parties, that would mean that Midcontinent would make a payment of approximately \$4.15 per customer per month during the transition period.

VIII. The Agreement Should Contain Language that Ensures that Neither Party Can Evade Its Obligations to Transfer Customers.

Missouri Valley has proposed language to limit a party's obligation to disconnect a customer moving to another carrier.⁴³ While Midcontinent does not object to reasonable limitations on such obligations, it needs assurance that Missouri Valley will comply with its number portability obligations and that Missouri Valley will complete the transition from resale to facilities-based service within the twelve month period that Missouri Valley agreed it would meet. As a consequence, Midcontinent's proposal on this issue should be adopted.⁴⁴

There are two elements to Midcontinent's proposal. The first is to ensure that Missouri Valley's proposed limitation of its obligations to "disconnection of its service to the customer" does not eliminate Missouri Valley's obligation under the Number Portability Attachment to port customer numbers consistent with industry standards. This is a simple clarification to ensure that there is no doubt that number portability will be available to Missouri Valley customers and to customers who are purchasing resold service from Midcontinent and who will be receiving facilities-based service.⁴⁵

The second issue is when Missouri Valley can choose to attend to its own customers rather than completing the steps required to transition customers to Midcontinent's facilities.

The testimony at the hearing established that Missouri Valley's tasks during the transition will be

⁴³ See Exhibit 22 at 12 (page is unnumbered).

⁴⁴ Midcontinent's proposed language appears on page 4 of the Pre-ordering Attachment to Midcontinent's proposed interconnection agreement, in Section 3.1.5.

⁴⁵ The shift from resold service to facilities-based service requires porting the customer's number from Missouri Valley to Midcontinent.

almost entirely administrative – changing the customer records, making database entries and the like – and that the personnel who are responsible for responding to cable cuts and other emergency repairs to outside plant are different than the personnel who are responsible for these administrative tasks or for turning off former Missouri Valley customers’ services.⁴⁶

Further, the record establishes that Missouri Valley has the capacity for at least 15 customer changes a day under the current resale agreement.⁴⁷ Given that the requirements for changing over customers are not much different than the requirements for new Midcontinent customers, there is no reason to believe that there should be a substantial difference in Missouri Valley’s capacity for customer changeovers.⁴⁸ Issues that occur locally in Williston also are not likely to cause delays in responding to Midcontinent’s requests because Missouri Valley has “a distributed customer service group,” spread over seven different locations.⁴⁹ As a result, there will be very few instances in which “work schedule conflicts” are likely to occur.

Nevertheless, Midcontinent recognizes that there may be rare occasions when there are conflicts that may delay disconnections or number portability. For that reason, Midcontinent has not objected to inclusion of appropriate language to address that concern. However, it also is critical that such rare conflicts not be used as an excuse for Missouri Valley to stretch out the transition from resale to facilities-based service. To address that concern, Midcontinent has proposed language that specifically acknowledges Missouri Valley’s agreement to complete the transition within twelve months after the effective date of the agreement. This is a reasonable approach to safeguarding the transition period, and should be adopted.

⁴⁶ Tr. at 303-04 (Kilgore cross-examination).

⁴⁷ Exhibit 20 (letter to Mary Lohnes from Kathy Greenwood, asking Midcontinent to limit its requests for new service to 15 per day).

⁴⁸ Tr. at 134-37 (Gates cross-examination).

⁴⁹ Tr. at 252 (Kilgore cross-examination).

IX. Administrative Charges for Customer Changes Should Be Set No Higher than Under the Current Resale Agreement.

The resale agreement between Midcontinent and Missouri Valley sets the charge for the processes necessary to sign up a new customer for resale service at \$22.50 per request.

Midcontinent has proposed to continue to use this charge in the new agreement; Missouri Valley has proposed to raise this charge to \$38.50 per request.⁵⁰ While Midcontinent does not object to paying a reasonable rate for these functions, the testimony shows that Missouri Valley's proposed rate is excessive and unsupported and should be rejected.

First, Missouri Valley provided no cost support for its proposed rate. Although Mr. Kilgore indicated that some cost analysis had been performed, none of the underlying materials were provided with his testimony.⁵¹

Second, Missouri Valley did not calculate the cost correctly. Costs associated with performing number portability must be determined on an incremental cost basis – that is, based on the specific additional cost of performing the required task.⁵² Mr. Kilgore, however, stated that his cost calculations included not only the incremental costs associated with customer conversions, but all of the overhead and benefits for employees, and “tools, test equipment, vehicles, whatever it takes for that individual to perform the duties as assigned.”⁵³ As a result, Missouri Valley included costs that are supposed to be included in the calculation, and therefore Missouri Valley's cost estimates are too high.

Third, the principal basis for Missouri Valley's effort to adopt a higher rate is that labor costs are high in Williston. However, there is no evidence that labor costs are higher in Williston than anywhere else in rural North Dakota, and Mr. Kilgore testified that, in fact, Missouri Valley

⁵⁰ Midcontinent's proposal is contained in the Pricing Attachment to the proposed interconnection agreement.

⁵¹ Tr. at 251 (Kilgore cross-examination).

⁵² See, e.g., Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (permitting only recovery of costs associated specifically with number portability).

⁵³ Tr. at 306-7 (Kilgore cross-examination).

has a “distributed” customer service operation that does not depend solely on the two employees in Williston.⁵⁴ This ameliorates any cost differences.

In fact, review of the rates charged by other rural carriers in North Dakota suggests strongly that Missouri Valley’s proposed rate is much too high. It not only would be the highest rate charged to Midcontinent by a rural carrier, but it would be 40% higher than the next highest rate.⁵⁵ While none of these rates were arbitrated, they reasonably suggest a ceiling for a reasonable rate, as it is unlikely that a rural carrier would accept a rate that was lower than its incremental costs.

Next, there is no reason to believe that the costs for performing the tasks associated with transferring a customer to Midcontinent are any different than the costs for opening a new resale customer account. The two processes involve many of the same steps (except that transferring a customer to Midcontinent’s facilities-based operations almost never will require dispatching a technician, which will reduce Missouri Valley’s costs), and almost all of the tasks are administrative.⁵⁶

Perhaps most telling, Missouri Valley proposes to increase the charge for Midcontinent even though it does not charge either Verizon Wireless or Sagebrush Cellular anything at all for these functions.⁵⁷ Missouri Valley could not provide any explanation for this difference other than that it had not done any porting with another wireline carrier in the past.⁵⁸ In fact, and as conceded by Mr. Kilgore during the hearing, there are no differences between the process for

⁵⁴ Tr. at 252 (Kilgore cross-examination). Mr. Kilgore did argue that “I think” the wages in Williston are “not the norm,” but he did not provide any support for that claim, and earlier claimed that labor markets in Montana also were “tight.” Tr. at 253 (Kilgore cross-examination) (labor markets in Montana communities); 317-18 (Kilgore redirect) (wages in Williston).

⁵⁵ See Exhibit 7 (rates charged for customer changes by other North Dakota rural carriers).

⁵⁶ Tr. at 115-16 (Gates cross-examination) (steps required to change over customers are limited), 253-257 (Kilgore cross-examination) (discussion of steps to activate resale customers and to port telephone numbers).

⁵⁷ Tr. at 250 (Kilgore cross-examination).

⁵⁸ Tr. at 259-60 (Kilgore cross-examination).

porting a number to a wireless carrier and the process for porting a number to a landline carrier.⁵⁹ Moreover, Missouri Valley has not reviewed its decision not to charge the wireless providers for number portability at any time in the last two years despite its claim that costs are escalating in Williston.⁶⁰ This evidence supports a conclusion that Midcontinent should not be charged at all, let alone subjected to an increased rate that is not supported by other evidence.

Finally, whatever charge is set in this proceeding should not be subject to change at Missouri Valley's discretion. Instead, the charge should remain in place until it is superseded by a new negotiated charge or one that is set based on an actual cost study. It is important for both parties to have this certainty so that they may plan appropriately.

X. Issues Concerning the Financial Impact of Facilities-Based Interconnection on Missouri Valley Can Be Considered in this Proceeding Only for Extremely Limited Purposes.

At the end of the hearing, the parties were asked to brief two related questions: (a) the extent to which the financial impact of facilities-based interconnection on Missouri Valley can be considered in this proceeding; and (b) whether there is any obligation to ensure that Missouri Valley is made whole for its losses as a result of the implementation of facilities-based interconnection. With extremely limited exceptions, these issues are outside the scope of this proceeding.

Initially, there are specific, limited ways in which the financial impact of interconnection can be considered and in which Missouri Valley must be compensated. In particular, under Section 252(d)(2) of the Communications Act, Missouri Valley would be entitled to reciprocal compensation to account for its incremental costs of terminating local traffic sent to it by Midcontinent, so long as it could demonstrate the extent of those costs and that bill-and-keep

⁵⁹ Tr. at 260 (Kilgore cross-examination); *see also* 47 C.F.R. § 52.26 (adopting North American Numbering Council recommendations for number portability processing flows for all carriers).

⁶⁰ Tr. at 320-22 (Kilgore cross-examination).

compensation would not be adequate.⁶¹ As described above, however, Missouri Valley has not been able to make any such showing.⁶² Similarly, Missouri Valley is entitled to be compensated for its costs in switching customers to Midcontinent. Midcontinent has agreed to continue to pay those costs at current levels.⁶³

However, an arbitration proceeding is not a forum for consideration of the impact of competition on the interconnecting carrier. Section 252 of the Communications Act specifically limits arbitrators to considering open issues relating to the terms and conditions of the requested interconnection, and forecloses consideration of other matters.⁶⁴ This is a particularly important point in this proceeding, because Missouri Valley's stated issues did not include the question of the impact of this proceeding on its operations and because the full Commission specifically rejected Missouri Valley's efforts to avoid interconnection altogether through a motion to dismiss.

In addition, consideration of the impact of competition on an incumbent carrier in an arbitration proceeding, particularly one under Section 251(a), would be a violation of the market-opening requirements of Section 253 of the Communications Act.⁶⁵ Section 253 prohibits regulators from imposing barriers to competition, and the imposition of any conditions in an arbitration based on the impact of competition on the incumbent plainly would constitute a barrier to competition.⁶⁶

⁶¹ 47 U.S.C. § 252(d)(2).

⁶² See *supra* Section III.A.

⁶³ See *supra* Section IX.

⁶⁴ 47 U.S.C. § 252.

⁶⁵ 47 U.S.C. § 253(a).

⁶⁶ For instance, if an arbitrator imposed a build-out requirement on a competitor before the interconnection agreement would become effective, that requirement would be a violation of Section 253. Public Utility Commission of Texas, *Memorandum Opinion and Order*, 13 FCC Rcd 3460, 3466 (1997) (holding that "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" and preempting such requirements under Texas law).

Similarly, no action in this proceeding can be taken to make Missouri Valley “whole” for any presumed losses from competition. Both Section 252 and Section 253 prohibit considering such steps, and the FCC explicitly concluded in its 1996 *Local Competition Order* that using the prices of reciprocal compensation and other functionalities provided by incumbents as a means of recovering “opportunity costs” related to competition was inconsistent with the Communications Act. In that proceeding, incumbents had proposed pricing interconnection and reciprocal compensation based on the “efficient pricing component rule,” under which prices would be set based on the total of the incremental cost of those functions “plus the opportunity cost that the incumbent carrier incurs when the new entrant provides the services instead of the incumbent.”⁶⁷ The FCC rejected that approach because it concluded that the efficient component pricing rule would not set prices efficiently and because:

We do not believe that Congress envisioned a pricing methodology for interconnection and network elements that would insulate LECs’ retail prices from competition. Instead, Congress specifically determined that input prices should be based on costs because this would foster competition in the retail market.⁶⁸

Thus, there is no basis for attempting to make an incumbent whole in an arbitration proceeding.

That is not to say, however, that Missouri Valley has no recourse to recover lost revenues. First, the FCC’s access recovery mechanism will permit Missouri Valley to recover a significant portion of any local access revenue.⁶⁹ Those losses also will be ameliorated by Midcontinent’s transition payments, which will not count against Missouri Valley’s access revenues for purposes of determining its eligibility for additional universal service funds.

⁶⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd at 15499, 15859 (1996). (¶ 708). In the context of the efficient component pricing rule, the opportunity cost is the revenue lost by the incumbent.

⁶⁸ *Id.* at 15859-60.

⁶⁹ Gates Direct at 54-60.

Second, and equally significant, Missouri Valley will have the same opportunities as any rural carrier that competes against Midcontinent to augment its revenue by offering other services. Through its affiliate Sagebrush Cellular, Missouri Valley already offers one kind of service that Midcontinent does not. Missouri Valley also can partner with video providers like DirecTV or provide its own video services, as many competitors to Midcontinent already do.⁷⁰ In addition, Mr. Duval has outlined a series of strategies for rural carriers seeking to stabilize their businesses and enhance their revenues.⁷¹ He agreed that those strategies are equally applicable to rural carriers facing competition and they all are available to Missouri Valley.⁷²

Third, Missouri Valley has multiple opportunities outside the context of this proceeding to seek regulatory relief if necessary. It can ask for rate increases, seek to obtain a waiver of its carrier of last resort obligations or seek other support from the Commission. It can obtain a suspension of obligations under Section 251(b) of the Communications Act, including the reciprocal compensation requirement for termination of local traffic. Under the FCC's procedures, it can ask for a waiver of the universal service or intercarrier compensation rules to account for the impact of competition. All of these steps are available if Missouri Valley, in light of the experience of actual competition, determines that they are necessary and can convince the Commission or the FCC that they are warranted.

However, these options are not available in an arbitration and, equally important, they should not be available until such time as Missouri Valley can demonstrate actual harm. As the evidence in this proceeding demonstrates, no rural carrier in North Dakota has felt the need to

⁷⁰ Tr. at 74-75 (Simmons cross-examination).

⁷¹ See Exhibit 3 at 47-59 (portions of presentation to National Telephone Cooperative Association describing steps that rural carriers can take to operate more profitably).

⁷² Tr. at 367-68 (Duval cross-examination). (“Q: Would these same ideas apply to a company in a competitive environment? A: I think that they apply to all rural carriers, whether they be in a competitive environment or not.”).

seek such relief after Midcontinent has entered its market.⁷³ There is no reason to presume that Missouri Valley, operating in the most dynamic and possibly fastest-growing market in the state, will fare any worse than other rural carriers.

XI. There Is No Basis for Granting a Stay of Implementation of the Interconnection Agreement.

The parties have been asked to brief questions relating to the possibility that a stay might be requested and whether action on such a stay would be appropriate at this time. As was apparent during the hearing, Missouri Valley likely will request a stay at some point in the consideration of the results of the arbitration, apparently based at least in part on its belief that the Commission's decision on Missouri Valley's motion to dismiss was incorrect. However, there is no basis to seek a stay at this time, or any time before the Commission adopts an order confirming or modifying the arbitration recommendation. Further, there will be no basis to grant a stay even after the Commission acts.

A. There Is No Reason to Consider a Stay Request in the Context of an Arbitration Recommendation.

If Missouri Valley requests a stay at this stage in the arbitration, that request must be denied for two reasons: (1) the result of this stage of the proceeding is a recommendation, not an action of the Commission, and so the proceeding is not ripe; and (2) an arbitrator lacks the authority to decide such a question.

Any stay request made by Missouri Valley at this stage is not ripe for review. Before a stay can be granted, an actual order adopting implementation of an interconnection agreement must be entered. Indeed, at this time, there has not even been a *recommended* decision on an interconnection agreement. "An issue is not ripe for review if it depends on future contingencies which, although they might occur, necessarily may not, thus making addressing the question

⁷³ Simmons Direct at 7; Tr. at 51-52 (Simmons cross-examination).

premature.” *Bies v. Obregon*, 1997 ND 18, ¶ 9, 558 N.W.2d 855. Any request for a stay prior to an order from the Commission is not ripe because the subject of the stay, that is an interconnection agreement, has not actually been ordered and will not be ordered, at the earliest, until the Commission completes its review. *See, e.g.* N.D.A.C. § 69-02-10-32.

The second reason a stay is inappropriate at this stage is that, with due respect to the arbitrator, the arbitrator does not have the statutory or administrative authority to address such a request if made. The administrative rules governing the arbitrator’s authority specifically set forth what authority an arbitrator has in these proceedings, and those rules do not grant the power to issue a stay.

The North Dakota Administrative Code governs arbitration of issues arising under sections 251 and 252 of the federal Communications Act. N.D.A.C. § 69-02-10-02. The administrative code specifically delineates what authority the arbitrator has. *Id.* § 69-02-10-13. The arbitrator has the authority to arbitrate “the disputed issues,” “has the authority of a hearing officer,” and “will conduct the procedural aspects of the arbitration proceeding.” *Id.* What the arbitrator will ultimately decide and recommend to the Commission is specifically outlined in the administrative code:

The arbitrator shall issue an arbitrator's decision which shall constitute resolution of the issues submitted for arbitration, subject to final commission approval. The arbitrator's decision shall include:

1. A summary of the material evidence presented;
2. A discussion of the issues incorporating the respective positions of each of the parties;
3. A proposed agreement of the arbitrated issues; and
4. The final recommendation of the arbitrator.

The arbitrator's decision shall be issued no later than nine months from the date of the request for negotiation.

Id. § 69-02-10-29. Under these provisions, the arbitrator's responsibility is to make a determination on "the issues submitted for arbitration"—nothing more and nothing less. The issues submitted for arbitration do not include any discussion of a stay.

Further, the administrative code and the Act do not provide authority to an arbitrator for matters outside of the purpose of the proceedings—that is to make a determination on the petition for interconnection. Indeed, the Commission's precedent in this very proceeding is telling. The Commission, rather than the arbitrator, heard argument on Missouri Valley's motion to dismiss in early February and rendered the decision denying the motion to dismiss. There was a question from the Commission whether the arbitrator should decide the motion to dismiss, but ultimately the Commission determined it was the appropriate decision maker on such a motion. *See* Email from Mark Gruman to counsel and arbitrator, dated February 1, 2012. While there is no explicit procedural guidance on how a dispositive motion, or a motion for a stay, is to be decided in a proceeding like this, the Commission determined it was responsible for making such a determination in the case of a dispositive motion or other substantive questions of law. While the arbitrator has specific authority over *procedural* matters that occur in any matter, including this arbitration, N.D.A.C. § 69-02-10-13, a stay request is substantive in nature and falls outside the scope of the arbitrator's authority.

B. There Will Be No Basis for Granting a Stay.

Even if the power to issue a stay at this point in the proceeding existed, Missouri Valley still would have to meet the heavy burden of proof required to obtain that relief. While, given the procedural bar to action, there is no need to reach the merits of any stay request, it is apparent that there will be no basis for any adjudicator to grant a stay.

The authority for requesting a stay is found within the North Dakota Rules of Civil Procedure, Rule 62. The North Dakota Supreme Court has interpreted Rule 62 and has determined that a party seeking a stay has the burden to meet four elements before a stay is granted:

(a) A strong showing that the appellant is likely to succeed on appeal; (b) That unless granted, the appellant will suffer irreparable injury; [(c) That no substantial harm will come to any party by reason of the stay]; and (d)] . . . That no substantial harm will come to the public interest.

Cass County Electric Coop., Inc. v. Wold Properties, Inc., 253 N.W.2d 323, 326 (N.D. 1977)

(determining a stay request in a rate increase case before the North Dakota Public Service Commission); *see also Fargo Women's Health Org. v. Edward T. Schafer*, 819 F.Supp. 865, 866 (D. N.D. 1993) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (using same criteria in North Dakota federal court). A reviewing court will not set aside a decision of a lower court unless the court abuses its discretion. *Cass County Electric*, 253 N.W.2d at 327. Here, the *potential* appellant, Missouri Valley, fails to meet any of the elements; and to the extent the arbitrator has authority to exercise his discretion on this issue, any request for a stay should be denied.

Missouri Valley is unlikely to succeed on appeal—if it in fact appeals.⁷⁴ The Order denying Missouri Valley's motion to dismiss speaks for itself. While Missouri Valley no doubt disagrees with the Commission, the rationale and result reached by the Commission in denying the motion to dismiss are compelling, and are fully consistent with the FCC's *Section 251(a) Declaratory Ruling*.⁷⁵ That order has not been appealed by Missouri Valley or any other party.

⁷⁴ The uncertainty of an appeal further demonstrates the essence of the reasons of why the arbitrator should decline to entertain any request for a stay, because such a request would not be ripe.

⁷⁵ *Midcontinent Communications/Missouri Valley Communications, Inc. Petition for Arbitration*, Findings of Fact, Conclusions of Law, and Order, Case No. PU-11-697 (Mar. 21, 2012); *Petition of CRC Communications of Maine*,

Therefore it is a final order and any collateral attack on that order will be highly disfavored, particularly in light of the FCC's status as an expert agency.⁷⁶

Further, while it is unclear what other grounds Missouri Valley may choose to raise in any appeal, there is no issue in this arbitration where there is any meaningful likelihood that Missouri Valley will succeed on the merits. Any Commission decision on factual matters will be entitled to deference, and in many cases Missouri Valley has not presented any competent evidence to challenge Midcontinent's showings, further limiting its ability to succeed on appeal. Moreover, if Midcontinent's proposals are adopted, those proposals all are well within the requirements of Sections 251 and 252 and the FCC's rules.

In any event, it is impossible for Missouri Valley to make a showing at this time as to the likelihood of success in appealing the issues in arbitration because those issues have yet to be decided. In other words, the real question is whether Missouri Valley is "likely" to succeed if it decides to appeal an order on interconnection that will be entered in the future. At this stage, assuming it appeals an order that has yet to be entered, Missouri Valley is extremely unlikely to convince the Commission that the Commission incorrectly decided the motion to dismiss or any other issue the Commission decides. Indeed, doing so would be nearly inconceivable.

Missouri Valley also would fail to meet the second element. Once an order on interconnection is entered, and if Missouri Valley decides to appeal such an Order, it cannot show sufficient evidence that it would be irreparably harmed. Again, it is impossible for Missouri Valley to show irreparable harm from the arbitration order at this time because it does not know what the recommended decision will say, let alone the Commission's final order. In any event, the kinds of issues that are subject to this arbitration, such as rates to be paid for

Inc. and Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, *Declaratory Ruling*, 26 FCC Rcd 8259 (2011) (the "*Section 251(a) Declaratory Ruling*").

⁷⁶ *Talk America, Inc. v. Michigan Bell*, ___ U.S. ___, 131 S.Ct. 2254 (2011).

reciprocal compensation or transferring customers, whether ISP-bound traffic is covered and whether the dispute resolution provisions will cover potential future disputes about new points of interconnection, are the not the kinds of issues that can cause irreparable harm. Many of them could be addressed by adjusting amounts paid by the losing party and the possibility of harm from the dispute resolution provision is speculative at best.

Missouri Valley also would be hard-pressed to demonstrate irreparable harm from the mere existence of competition. The record in this proceeding, as described above, shows that no rural carrier in North Dakota has suffered significant harm from competition and, in any event, permitting competition is the entire purpose of the Telecommunications Act of 1996, as evidenced by the specific requirements of Sections 251, 252 and 253.⁷⁷ In addition, when Missouri Valley attempted to introduce a claim of competitive harm, it did so via a proposed exhibit that utterly lacked a foundation and, in fact, could not be explained by Missouri Valley's own witness, so there is no evidence at all in this proceeding of economic harm to Missouri Valley that might be caused by competition.⁷⁸

Next, Missouri Valley would fail to satisfy the third element. Again, for purposes only of this analysis, and assuming an interconnection agreement is ordered by the arbitrator and adopted by the Commission, Midcontinent would be harmed significantly if such an agreement was not implemented immediately. While the specific harms will depend on the exact terms of the recommended decision and the Commission's order, it is plain from the evidence that Midcontinent would be harmed by a stay. That record shows that Midcontinent has been operating under an untenable resale agreement for many years, is in the process of developing a new and expensive fiber optic telecommunications link to Williston and has had numerous and

⁷⁷ See *supra* Section X; 47 U.S.C. §§ 251-253.

⁷⁸ Tr. at 307-16 (Kilgore cross-examination). Missouri Valley cannot, of course, attempt to bring new, untested evidence into this proceeding in an effort to bolster a stay request.

frustrating customer complaints to which it cannot give a plausible response. Midcontinent continues to be harmed every day an interconnection agreement is not in place. Delaying such would further harm Midcontinent. In addition, it is evident that Congress expected arbitrations to result in prompt adoption and implementation of interconnection agreements, as it created specific timetables for action in arbitration proceedings.⁷⁹

Finally, Missouri Valley would fail to meet the fourth element. Substantial harm would not befall the public in the event an order is eventually entered by the Commission on interconnection. In fact, the public is being harmed today by the absence of facilities-based competition in Williston. Customers are being left unserved when they could be served by Midcontinent, repairs and installations are taking too long, and services and features that would be available through Midcontinent are unavailable in that market. Indeed, Congress made the fundamental calculation of the public interest when it adopted the 1996 Act, as expressed in the conference report for the final legislation, which described the purpose of the Act as being “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced information technologies and services to all Americans by opening all telecommunications markets to competition....”⁸⁰ Any action that prevents that competition from emerging is contrary to the Congressional determination of the public interest.

⁷⁹ 47 U.S.C. § 252.

⁸⁰ Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H.Rep. 104-458, at 1.

XII. Conclusion

For all of these reasons, the arbitrator should recommend that the Commission adopt terms for an interconnection agreement between Midcontinent and Missouri Valley that are consistent with the proposals contained in this brief.

Dated: April 20, 2012

PEARCE & DURICK

/s/Zachary E. Pelham

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Attachment 1

Balance of Traffic Calculated Based on Terminating Minutes

1 modified to a bill and keep methodology.

2
3 **Q. Do you agree that traffic between MVC and Midcontinent is imbalanced?**

4 A. Neither party has produced a study that proves their position, but based on the customer mix
5 served by each company, I believe that there is good reason to believe that the traffic is not in
6 balance. As of February 29, 2012, MVC serves a total of 7,267 lines, made up of 3,353
7 residential and 3,914 business lines. Midcontinent serves 1,751 residential lines and 334
8 business lines for a total of 2,085 lines⁹. It is generally understood that business lines
9 originate and terminate more calling than residential lines. Because MVC serves the majority
10 of the business lines in the Williston exchange, it can be inferred that MVC would also
11 terminate more traffic from Midcontinent than Midcontinent would terminate MVC traffic.

12 I have prepared a simple analysis¹⁰ that assumes that calling patterns for all residential
13 lines are the same and that calling patterns for all business lines are the same in the Williston
14 exchange. In this analysis I assumed that each residential access line terminates 100 local
15 minutes of use and that each business line terminates 300 local minutes of use each month.
16 Because MVC serves 78% of all lines, it is assumed that 78% of all traffic terminates on
17 MVC's network, including calling from both MVC and Midcontinent lines. As a result, MVC
18 would terminate 1,172,962 minutes of use from MVC lines and 336,538 minutes of use from
19 Midcontinent lines. Midcontinent serves approximately 22% of all lines, so it is also assumed
20 that 22% of all traffic would terminate on Midcontinent's network, including calling from
21 both MVC and Midcontinent lines. As a result, Midcontinent would terminate 61,377
22 minutes of use from Midcontinent lines and 213,923 minutes of use from MVC lines. The
23 minutes of use to which reciprocal compensation applies are the minutes of use terminated
24 from the other carrier. In this example, MVC would terminate 336,538 minutes of use from
25 Midcontinent lines, and Midcontinent would terminate 213,923 minutes of use from MVC

26 _____
27 ⁹ See Attachment 4 to the Direct Testimony of Michael Kilgore.

28 ¹⁰ See Attachment 1 to the Direct Testimony of Chad A. Duval.

1 lines. This is a termination ratio of approximately 61% MVC and 39% Midcontinent, or a net
2 payment of 22% to MVC.

3 In this simple analysis, using the reciprocal compensation rate proposed above,
4 Midcontinent would owe MVC a net payment of approximately \$3,709 on a monthly basis.
5 While this is hardly an amount worth arbitrating and potentially litigating a forward looking
6 economic cost based cost study over, given the revenue losses that MVC is likely to
7 experience as a result of the direct interconnection with Midcontinent, it is revenue that will
8 prove important to MVC in continuing to provide service to customers throughout the
9 Williston exchange. If the disparity of minutes of use between business and residential lines is
10 varies from the 3 to 1 assumed, then the net payment to MVC would vary as well.

11
12 **Q. Has anything recently changed in the FCC's rules that requires bill and keep for local**
13 **interconnection?**

14 A. No. While the FCC recently revised many of its rules relating to the interconnection of
15 telecommunications networks, including the interconnection of wireline and wireless
16 networks, it did not make any substantive changes to its rules relating to the interconnection
17 of two wireline networks. In its recent USF and Intercarrier Compensation Reform Order¹¹,
18 and a subsequent Order on Reconsideration¹², the FCC modified its rules to require that local
19 interconnection between a wireline carrier and a wireless carrier utilizes a bill and keep
20 methodology effective July 1, 2012. However, the FCC maintained the ability to utilize

21
22 ¹¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN
23 Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-*
24 *Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC
25 Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC
26 Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further
27 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-161 (Released November 18,
28 2011)

29 ¹² *In the Matter of Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN
30 Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-*
31 *Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC
32 Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC
33 Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Order on Reconsideration, FCC
34 11-189 (Released December 23, 2011)

**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.)	

RECOMMENDED DECISION

This recommended decision addresses the open issues in the arbitration between Midcontinent Communications (“Midcontinent”) and Missouri Valley Communications, Inc. (“Missouri Valley”). As identified by the parties and the arbitrator, the open issues are as follows:

- Effective date of the agreement
- Dispute resolution for disputes concerning points of interconnection
- Reciprocal compensation for termination of local traffic
- Compensation for ISP-bound traffic
- Compensation for toll traffic
- Determination of amount of transitional compensation
- Obligations to transfer customers
- Charges for implementing carrier changes

The arbitrator also asked the parties to brief certain additional issues related to the extent to which the potential impact of competition can be considered in this proceeding

and whether the arbitrator can consider a stay request if one should be submitted. This recommended decision addresses each of the enumerated issues.

I. Procedural History

A. Delineation of Issues

Midcontinent filed its petition for arbitration on November 14, 2011, and Missouri Valley filed a response on December 8, 2011. The parties further refined the issues in this proceeding through the exchange of drafts of a proposed interconnection agreement, first from Midcontinent to Missouri Valley on February 3, 2012, and then from Missouri Valley to Midcontinent on February 28, 2012. Midcontinent submitted a chart showing the remaining open issues on March 14, 2012, and the arbitrator provided the parties with a memorandum detailing issues to be considered at the hearing in advance of the final prehearing conference on April 2, 2012.

B. Motion to Dismiss

Missouri Valley filed a motion to dismiss Midcontinent's petition on November 21, 2011. The parties briefed the motion, and the Commission held a hearing on the motion on February 10, 2012. Following post-hearing briefs, the motion was denied on March 21, 2012.

C. Testimony, Exhibits and Hearing

The parties submitted prefiled testimony on March 28, 2012. Midcontinent submitted testimony for two witnesses, W. Thomas Simmons and Timothy J Gates. Missouri Valley submitted testimony for two witnesses as well, Mike Kilgore and Chad A. Duval.

On April 1, 2012, Midcontinent filed a motion to strike portions of the testimony of Mssrs. Kilgore and Duval as being outside the scope of the issues the parties had defined. That motion was granted on April 4, 2012. In addition, during the hearing,

Midcontinent challenged the admission of Attachment 4 to Mr. Kilgore's testimony, and admission of that exhibit was denied.

An evidentiary hearing was held on April 4 and 5, 2012. Each party presented its witnesses and was afforded the opportunity for cross-examination of the other party's witnesses and the introduction of relevant exhibits. A total of 17 exhibits, including the prefiled testimony of each witness and supplemental testimony by Mr. Duval, were admitted into evidence.

The parties submitted post-hearing briefs on April 20, 2012. Each party also submitted a proposed recommended decision and Midcontinent submitted a proposed interconnection agreement.

II. Effective Date of the Interconnection Agreement

Midcontinent's proposes that the interconnection agreement become effective the day it is approved by the Commission unless a stay of the effectiveness of the agreement is granted. Missouri Valley proposes to delay the effective date until the completion of any appeals. Midcontinent's proposal is adopted.

The evidence shows that Missouri Valley's other interconnection agreements do not have a provision comparable to this one. Midcontinent demonstrated that Missouri Valley will have ample opportunity to obtain a stay of the effective date of the agreement if Missouri Valley can demonstrate that it has a meritorious appeal and that it will be irreparably harmed by implementation of the agreement. Midcontinent also showed that delaying the effective date of the agreement will have harmful effects on customers in Williston and on Midcontinent.

Given the opportunity that Missouri Valley will have to obtain a stay and the potential harm to Midcontinent from a delay in implementation, there is no benefit to

adopting Missouri Valley's proposal. In addition, delaying implementation would be contrary to the Congressional intent, expressed in the provisions of the federal Communications Act governing arbitration and approval of interconnection agreements, to ensure that interconnection is made available expeditiously. *See* 47 U.S.C. § 252.

Therefore, Midcontinent's proposed language shall be adopted, as follows:

General Terms and Conditions

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. Any such action shall not affect the effectiveness of this Agreement unless the Commission or the court issues a stay of the effective date. The Agreement is between Missouri Valley Communications, Inc. (MVC), a North Dakota corporation and Midcontinent Communications a South Dakota General Partnership (Midcontinent).

* * *

2.2 Term of Agreement

2.2.1 This Agreement shall become effective upon approval under Section 1.1 unless stayed by the Commission or the Federal district court. 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.

III. Dispute Resolution for Impasses as to Points of Interconnection

Midcontinent proposes that impasses related to negotiations on future points of interconnection under the agreement be resolved under the dispute resolution provisions of the general terms and conditions. Missouri Valley proposes to exempt such impasses from the dispute resolution provisions. Midcontinent's proposal is adopted.

The Missouri Valley position is that there should be no provision for resolving disputes over future points of interconnection. This would leave the parties in an uncertain position if such disputes do arise, as it would be unclear whether they would be able to seek relief from the Commission or would be barred from seeking any relief at all. As Midcontinent notes in its brief, the possibility of such disputes is real, particularly as carriers move to Internet Protocol-based interconnection in the future. Given that Missouri Valley has not objected to applying the dispute resolution provisions of the agreement to any other type of dispute, and given the necessity of having a mechanism for resolving interconnection disputes, Midcontinent's proposal is the better approach.

Because Midcontinent's proposal does not require changing any language in the agreement as proposed, no contractual language need be provided to adopt that proposal.

IV. Reciprocal Compensation

Alternative 1:

Midcontinent has proposed bill-and-keep compensation for termination of local traffic. Missouri Valley has proposed to adopt a rate of \$0.0302409, based on the rate in its two existing interconnection agreements with wireless providers. Midcontinent's proposal will be adopted.

Under the FCC's current rules, reciprocal compensation rates set via arbitration can be set in one of two ways:

An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

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

These rules apply to any reciprocal compensation rates set after December 29, 2011, and therefore apply to this proceeding.

Under the FCC's rules, if a cost study has not been prepared, the only permissible choice is to adopt a bill-and-keep arrangement. Missouri Valley, the party in possession of the information necessary to prepare a cost study, did not do so and did not provide any cost support for its proposed rates. In addition, the record shows that the rates for reciprocal compensation under Missouri Valley's current interconnection agreements will be reset to bill-and-keep on July 1, 2012, as a result of the recent changes in the FCC's intercarrier compensation rules. Thus, if Missouri Valley's rate were adopted, Midcontinent would be the only carrier paying that rate.

Although the FCC's rules do not require a finding that traffic will be in balance to support bill-and-keep reciprocal compensation, there is no evidence in this proceeding that demonstrates that traffic will not be in balance. While Missouri Valley witness Duval produced an analysis of a scenario in which traffic would not be in balance, that scenario was not based on a traffic study and was shown to be highly sensitive to the assumptions made when the study was constructed. In addition, the record shows that the vast majority of rural carriers that interconnect with Midcontinent operate under bill-and-keep. These facts further support the conclusion that it is appropriate to adopt bill-and-keep compensation.

Therefore, Midcontinent's proposed language shall be adopted, as follows:

Interconnection Attachment

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.

Alternative 2:

Midcontinent has proposed bill-and-keep compensation for termination of local traffic or, in the alternative, adoption of a rate of no more than \$0.004/minute with a ramp-down to bill-and-keep over a four year period, with a “collar” that would limit a party’s obligation to pay reciprocal compensation to months when the traffic balance is worse than 60/40. Missouri Valley has proposed to adopt a rate of \$0.0302409, based on the rate in its two existing interconnection agreements with wireless providers.

Midcontinent’s alternative proposal will be adopted.

Under the FCC’s current rules, reciprocal compensation rates set via arbitration can be set in one of two ways:

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

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

These rules apply to any reciprocal compensation rates set after December 29, 2011, and therefore apply to this proceeding.

Missouri Valley, the party in possession of the information necessary to prepare a cost study, did not do so and did not provide any cost support for its proposed rates. In addition, the record shows that the rates for reciprocal compensation under Missouri Valley’s current interconnection agreements will be reset to bill-and-keep on July 1, 2012, as a result of the recent changes in the FCC’s intercarrier compensation rules.

Thus, if Missouri Valley's rate were adopted, Midcontinent would be the only carrier paying that rate. This record does not provide any basis to conclude that Missouri Valley's proposed rate is in compliance with the FCC's requirements to base reciprocal compensation rates on forward-looking economic costs.

Missouri Valley also argues that there is reason to believe that traffic will not be balanced, and that it will be the party that terminates the most traffic from the other party. In support of this argument, Missouri Valley witness Duval produced an analysis of a scenario in which traffic would not be in balance. That scenario was not based on a traffic study and was shown to be highly sensitive to the assumptions made when the study was constructed. Neither that analysis nor the claims made by Missouri Valley's other witness, Mr. Kilgore, concerning traffic balance provided sufficient evidence to conclude that traffic will not be in balance.

However, because there is some possibility that traffic will not be in balance, and to be consistent with the FCC's intention to adopt a gradual transition for landline carrier reciprocal compensation, Midcontinent's bill-and-keep proposal will not be rejected, and instead its alternative proposal for payment of \$0.004/minute with a ramp down and collar will be adopted. During the hearing, Midcontinent presented evidence demonstrating that \$0.004/minute was the highest reasonable rate to recover the incremental costs associated with reciprocal compensation, including a nationwide survey of state-adopted rates and an analysis of the rates in other rural carriers' agreements with Midcontinent. Further, as acknowledged by Missouri Valley witness Duval, under the FCC's former rules, a rate of \$0.004/minute was the highest proxy rate for reciprocal compensation that could be adopted, based on the FCC's analysis of the cost of

terminating local traffic. While Mr. Gates presented evidence for Midcontinent that suggests that actual incremental costs are likely to be significantly lower than \$0.004/minute, and more likely approximately \$0.002/minute, the adoption of the \$0.004/minute rate guards against the possibility that Missouri Valley's costs might be higher than average.

Midcontinent's proposed ramp down and collar also will be adopted. The collar is an appropriate mechanism to reduce administrative costs associated with collecting small, immaterial amounts of reciprocal compensation, and adoption of a 60/40 collar will prevent collection of reciprocal compensation as a result of random fluctuations in traffic. The ramp down is consistent with the FCC's intent to reduce intercarrier compensation rates and for carriers to recover those costs over time from their own customers. In addition, under the FCC's access recovery mechanism, Missouri Valley will be able to compensate for any lost revenue from the ramp down.

Therefore, Midcontinent's proposed alternative language shall be adopted, as follows:

Interconnection Attachment

3.2.1 Reciprocal compensation shall apply only to the transport and termination of Local/EAS Traffic and ISP-Bound Traffic and shall not apply to any other traffic or service. The parties agree to bill and pay each other monthly for Local/EAS Traffic and ISP-Bound Traffic exchanged under this Agreement unless the combined Local/EAS Traffic and ISP-Bound 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 combined Local/EAS Traffic and ISP-Bound Traffic exchanged falls between 60%/40% in either direction. When the actual usage data for three (3) consecutive months indicates that the combined Local/EAS Traffic and ISP-Bound Traffic 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 combined Local/EAS Traffic and ISP-Bound 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 combined Local/EAS Traffic and ISP-Bound 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 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.

3.2.2 Reciprocal compensation for Local/EAS Traffic shall be at the rate of \$0.004/minute for the first year of this Agreement and shall be reduced by \$0.001/minute on each anniversary of the effective date of this Agreement. [Additional language in this section concerning ISP-bound traffic is discussed below.]

V. Compensation for ISP-Bound Traffic.

Although it does not appear that there is much ISP-bound traffic in Williston, the evidence indicates that a Missouri Valley affiliate, Nemont Communications, does provide at least some dial-up Internet service. Midcontinent proposes that the agreement include a provision to address such traffic and that ISP-traffic be treated in the same way as local traffic.. [Insert description of Missouri Valley proposal.]

Under the FCC's rules, the maximum compensation for ISP-bound traffic is \$0.0007/minute. However, as Midcontinent notes, given the volume of ISP-bound traffic in Williston, adopting different compensation schemes for ISP-bound traffic and local traffic is not practical. It is much more administratively efficient to adopt the same rate for both types of traffic. Consequently, Midcontinent's proposal to adopt identical rates for ISP-bound and local traffic is adopted.

Therefore, Midcontinent's proposed language shall be adopted, as follows:

Interconnection Attachment

3.2.2 Compensation for ISP-Bound Traffic shall be at the same rate as reciprocal compensation.

VI. Compensation for Termination of Toll Traffic

The parties were asked to address the question of how to account for access traffic sent from one party to the other (that is, the termination of toll calls, as opposed to local calls). Midcontinent's position is that the parties should be required to pay standard access charges for such traffic, and that the charges should be set by the terminating party's access tariff. [Describe Missouri Valley's position.]

Neither party took a position on whether specific language to address this issue should be included in the agreement. However, as Midcontinent noted, it is customary for parties to include language to this effect in their interconnection agreements, and such language was included in Midcontinent's initial draft agreement. For this reason, Midcontinent's original proposed language on this issue is adopted, as follows:

Interconnection Attachment

3.2.3 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.

VII. Calculation of Transition Payments

The only question relating to the proposed transition payments is whether the per-customer payment should be set at the outset of the transition or calculated on a per-customer basis. Midcontinent proposes that the calculation be made at the beginning of the transition period. Missouri Valley has proposed that the calculation be made individually for each customer subject to the transition. Midcontinent's position is adopted.

Midcontinent's proposal is superior from the perspective of both administrative efficiency and certainty, and should not result in meaningfully different compensation to Missouri Valley. Calculating the per-customer, per-month payment in advance will reduce the burden on Missouri Valley to calculate the amount and on Midcontinent to verify and pay the applicable transition payments. In addition, since the payment will be set based on the aggregate access charges for all affected customers, the total amount paid will be very close to the amount that would be paid if individual calculations are made, so there is no likely harm to either party from doing the calculation at the outset.

For these reasons, Midcontinent's proposal is adopted, as follows:

Interconnection Attachment

3.6 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 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 all transferred customers for the six month period immediately prior to the date the transition begins, payable by Midcontinent for six (6) months following the date of transfer for each transferred customer. (As an illustration only, if the average monthly interstate and intrastate access charges for customers being transferred is determined prior to the start of the transition to be \$6.00 per month, the monthly Transition Compensation per transferred customer shall be \$4.50). The Parties' performance under Attachment 2 will include the exchange of information for determination of per customer Transitional Compensation amounts.

VIII. Obligations to Transfer Customers

Missouri Valley has proposed language to limit a party's obligation to disconnect a customer moving to another carrier. Midcontinent has stated that it will accept that language with modifications to ensure that Missouri Valley will comply with its number portability obligations and that Missouri Valley will complete the transition from resale

to facilities-based service within the twelve month period that Missouri Valley agreed it would meet. Midcontinent's proposal is adopted.

Midcontinent has proposed two changes to Missouri Valley's language. First, Midcontinent would insert language to ensure that both parties comply with the terms of the number portability attachment that require them to port the numbers of customers who are changing carriers. This language clarifies the parties' obligations and ensures there is no confusion.

The second change that Midcontinent proposes modifies language that limits Missouri Valley's obligation to transfer customers when Missouri Valley is attending to the needs of continuing customers. The testimony at the hearing demonstrated that such instances should be quite rare, as Missouri Valley has the capacity to transfer fifteen customers a day and there are few instances in which service outages will require the attention of the personnel responsible for transferring customers. Thus, it is reasonable to adopt language that safeguards against abuse of the principle that a carrier should serve its own customers first. Midcontinent's proposal, which is limited to ensuring that the agreed-to twelve-month transition is completed in a timely fashion, is a reasonable safeguard and does not impose an undue burden on Missouri Valley. Therefore, both of Midcontinent's modifications are appropriate.

Consequently, Midcontinent's proposal on this issue is adopted, as follows:

Pre-Ordering, Ordering, Provisioning, Maintenance and Repair Attachment

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 and compliance with its obligations under the Number Portability Attachment. Subject to MVC's obligations to complete the transfer of customers within a twelve month period after the effective date of this Agreement and to transfer roughly an equal number of customers each

week during the transition period, in cases of work schedule conflicts, a Party may attend to its continuing customers in preference to disconnection of a customer to be transferred.

IX. Administrative Charges for Customer Changes

Under the current resale agreement, the charge for the processes necessary to sign up a new customer for resale service is \$22.50. Midcontinent has proposed to continue to use this charge in the new agreement; Missouri Valley has proposed to raise this charge to \$38.50 per request. Midcontinent's proposal is adopted.

Missouri Valley did not provide any cost support for its proposed rate. While Missouri Valley witness Kilgore indicated that a cost analysis had been performed, his testimony also indicated that the analysis was based on fully loaded costs, not incremental costs, as required by the FCC's number portability rules. Although Mr. Kilgore suggested that high labor costs were a factor in setting the rate, he did not provide any evidence that labor costs in Williston are higher than in other rural areas of North Dakota where Midcontinent provides service, and Midcontinent showed that Missouri Valley's proposed rate would be 40 to 80 percent higher than what other rural carriers in North Dakota charge for the same functionalities.

The evidence also showed that the functions associated with changing a customer from one carrier to another are no more complex or time-consuming than the functions associated with activating a resale customer under the current agreement at the current rate. Therefore, there is no additional cost to be recovered for providing these functions.

In addition, Missouri Valley does not charge either Verizon Wireless or Sagebrush Cellular for the same functions, even though there is no material difference between performing these functions for wireless providers and performing them for a landline carrier. This fact would justify reducing the charge, or eliminating it entirely,

based on discrimination between providers. However, because Midcontinent has not objected to continuing to pay the current charge, the charge will not be eliminated.

The parties also disagreed about the extent to which charges under the agreement may be changed at the discretion of the parties. Midcontinent notes that there are benefits to certainty and that there are opportunities to modify charges as appropriate at a later date. Midcontinent's position on this issue is reasonable and does not foreclose the opportunity to ensure that legitimate costs are recovered.

For these reasons, Midcontinent's proposal on this issue is adopted, as follows:

Pricing Attachment

General.

The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement. MVC shall provide updated versions of the Tariff prior to the effective date of such change.

Service Order Charges

1. Service Order Charge (LSR)	
Facility Administration Charge	\$ 22.50
Primary Charge	\$ 18.00/request
Subsequent Charge	\$ 12.00/request
2. Service Order Cancellation Charge	\$ 12.00/request
3. Expedited Due Date in addition to SOC	\$ 32.00/request
4. Order Change Charge	\$ 12.00/request

Rate elements listed in this Attachment are not all inclusive.

X. Consideration of the Financial Impact of Facilities-Based Interconnection

At the arbitrator's request, the parties briefed two related questions: (a) the extent to which the financial impact of facilities-based interconnection on Missouri Valley can be considered in this proceeding; and (b) whether there is any obligation to ensure that Missouri Valley is made whole for its losses as a result of the implementation of

facilities-based interconnection. The briefing demonstrated that the financial impact may not be considered as a general matter in an arbitration proceeding, and that there are alternative mechanisms available to Missouri Valley if it is financially impaired.

Section 252 of the Communications Act specifically limits arbitrators to considering open issues relating to the terms and conditions of the requested interconnection, and forecloses consideration of other matters. Matters outside the scope of the open issues are not subject to arbitration. Consideration of matters relating to the impact of competition on an incumbent carriers also would be a violation of the market-opening requirements of Section 253 of the Communications Act, which prohibits regulators from imposing barriers to competition. The imposition of conditions in an arbitration based on the impact of competition on the incumbent plainly would constitute a barrier to competition, and therefore would violate Section 253.

For these reasons, an arbitration also cannot consider whether to take actions to make an incumbent carrier “whole” for any presumed losses from competition. As Midcontinent noted, when given the opportunity to adopt a pricing mechanism for reciprocal compensation and other functionalities provided by incumbents that would have included recovery of “opportunity costs,” related to competition the FCC concluded that such additional compensation was inconsistent with the Communications Act.

Midcontinent also noted that Missouri Valley will have opportunities to recover lost revenues. The FCC’s access recovery mechanism, for instance, will cover a substantial portion of Missouri Valley’s lost access revenues. In addition, Missouri Valley may seek regulatory relief from the Commission if it can demonstrate hardship, including rate increases, a waiver of its carrier of last resort obligations or a suspension of

obligations under Section 251(b) of the Communications Act, including the reciprocal compensation requirement for termination of local traffic. Additional relief is available from the FCC under its universal service and intercarrier compensation rules.

XI. Stay of Implementation of the Interconnection Agreement.

The parties also were asked to brief questions relating to the possibility that a stay might be requested and whether action on such a stay would be appropriate at this time. For the reasons described below, it is clear that an arbitrator does not have the power to grant a stay. In addition, there would be no basis to grant a stay even if an arbitrator had such power.

An arbitrator cannot grant a stay for two reasons. First, the result of this arbitration – this decision – is a recommendation, not an action of the Commission. As a consequence, it is not ripe for a stay. The Commission is empowered, within the limits of the Communications Act, to modify this recommended decision and adopt a different result. Until the final result is known, there is nothing to stay.

Second, an arbitrator lacks the power to grant a stay. The North Dakota Administrative Code specifically defines the authority of arbitrators, and that authority is limited to the matters required to arbitrate interconnection agreement disputes. The Code does not confer any plenary power to decide issues beyond that limited scope. This fact was reflected in this case, as the full Commission addressed the Missouri Valley motion to dismiss, rather than permitting the arbitrator to consider it.

Even if an arbitrator had the ability to issue a stay, there would be no basis for doing so in this case. Again, a recommended decision is not a final order, and not subject to a stay. This makes it impossible for a petitioner to explain what would be stayed,

which is a basic obligation for any party making such a request. In addition, a stay request would not meet any of the four elements of the standard for obtaining a stay:

- (a) A strong showing that the appellant is likely to succeed on appeal;
- (b) That unless granted, the appellant will suffer irreparable injury; [(c) That no substantial harm will come to any party by reason of the stay[; and (d)]
- . . . That no substantial harm will come to the public interest.

Cass County Electric Coop., Inc. v. Wold Properties, Inc., 253 N.W.2d 323, 326 (N.D. 1977) (determining a stay request in a rate increase case before the North Dakota Public Service Commission); *see also Fargo Women's Health Org. v. Edward T. Schafer*, 819 F.Supp. 865, 866 (D. N.D. 1993) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (using same criteria in North Dakota federal court).

In this case, Missouri Valley has little likelihood of succeeding on the merits in overturning this proceeding because the Commission's decision on the motion to dismiss is entirely consistent with a binding, final FCC decision on the same issues. Similarly, the decisions on each of the individual issues are fully consistent with FCC rules and the Communications Act.

Missouri Valley also cannot demonstrate irreparable harm. Most of the discrete issues in this proceeding are narrow and an adverse result is unlikely to be materially harmful to Missouri Valley. In most cases, any harm could be addressed by revising the amounts paid or other monetary compensation. Further, a claim of irreparable harm from competition would be faced by the Congressional determination that competition should proceed forthwith and is in the public interest.

At the same time, Midcontinent would be harmed by a stay. The evidence shows that Midcontinent suffers ongoing harm from the unavailability of interconnection and its

dependence on reselling Missouri Valley's service. Midcontinent also would be harmed by a stay because its investment in new fiber facilities would lay fallow.

Finally, substantial harm would not befall the public in the event that a stay is not granted. For the reasons noted by Midcontinent, the public interest is being harmed today in the absence of facilities-based competition in Williston. More important, Congress has determined that competition is in the public interest, specifically finding in the Conference Report for the Telecommunications Act of 1996 that the Act was adopted "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced information technologies and services to all Americans by opening all telecommunications markets to competition...." Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H.Rep. 104-458, at 1. Missouri Valley is unlikely to overcome the weight of that finding.

THEREFORE, IT IS RECOMMENDED THAT THE COMMISSION ADOPT AN ORDER CONSISTENT WITH THE CONCLUSIONS ABOVE.

Dated: May 1, 2012

Patrick Ward

Arbitrator

INTERCONNECTION AGREEMENT

Between

MISSOURI VALLEY COMMUNICATIONS, INC.

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

_____, 2012

TABLE OF CONTENTS

SECTION 1.0 – GENERAL TERMS	3
SECTION 2.0 – TERMS AND CONDITIONS	3
2.1 - GENERAL PROVISIONS	3
2.2 - TERM OF AGREEMENT	3
2.3 - PROOF OF AUTHORIZATION	4
2.4 - PERFORMANCE	4
2.5 - TAXES	6
2.6 - INSURANCE	6
2.7 - FORCE MAJEURE.	6
2.8 - LIMITATION OF LIABILITY.	7
2.9 - INDEMNITY	7
2.10 - WARRANTIES	8
2.11 - ASSIGNMENT	8
2.12 - DISCLAIMER OF AGENCY	9
2.13 - SEVERABILITY	9
2.14 - NONDISCLOSURE	9
2.15 - SURVIVAL	10
2.16 - CONTROLLING LAW	10
2.17 - NOTICES	10
2.18 - RESPONSIBILITY OF EACH PARTY	11
2.19 - NO THIRD PARTY BENEFICIARIES	11
2.20 - PUBLICITY	12
2.21 - EXECUTED IN COUNTERPARTS	12
2.22 - COMPLIANCE	12
2.23 - COMPLIANCE WITH THE COMMUNICATIONS ASSISTANCE LAW ENFORCEMENT ACT OF 1994	12
2.24 - COOPERATION	12
2.25 - AMENDMENTS	13
2.26 - ENTIRE AGREEMENT	13
2.27 - DISPUTE RESOLUTION	13
SECTION 3.0 - RESALE	16
3.1 - DESCRIPTION	16
3.2 - GENERAL PROVISIONS	16
3.3 - RESELLER RESPONSIBILITIES	19
3.4 - ESTABLISHMENT OF SERVICE	20
3.5 - MAINTENANCE OF SERVICE	22
3.6 - DISCONTINUANCE OF SERVICE	23
3.7 - BILLING AND PAYMENTS	24
3.8 - CUSTOMER BILLING DATA	25
SECTION 4.0 – DEFINITIONS	25

SECTION 5.0 – SIGNATURE PAGE

27

ATTACHMENT 1 – INTERCONNECTION

ATTACHMENT 2 – PRE-ORDERING AND ORDERING

ATTACHMENT 3 – LOCAL NUMBER PORTABILITY

ATTACHMENT 4 – ANCILLARY SERVICES

ATTACHMENT 5 – PRICING

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Section 1.0 - GENERAL TERMS

- 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. Any such action shall not affect the effectiveness of this Agreement unless the Commission or the court issues a stay of the effective date. The Agreement is between Missouri Valley Communications, Inc. (MVC), a North Dakota corporation and Midcontinent Communications a South Dakota General Partnership (Midcontinent).
- 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 and ISP-bound 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.

Section 2.0 - TERMS AND CONDITIONS

2.1 General Provisions

2.1.1 Each Party is solely responsible for the services it provides to its end users and to other telecommunications carriers. This provision does not limit the liability of either Party for its failure to perform under this agreement.

2.1.2 The Parties shall work cooperatively to minimize third party fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. Blocking of these services may be necessary to minimize fraud.

2.2 Term of Agreement

2.2.1 This Agreement shall become effective upon approval under Section 1.1 unless stayed by the Commission or the Federal district court. 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.

2.2.2 Any Party may request negotiation for a successor Agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the initial term and at any time thereafter.

2.2.3 This Agreement shall terminate:

2.2.3.1 Following the expiration of the initial term upon one hundred sixty (160) days prior notice from one Party to the other, provided that the Agreement shall continue in effect until a successor agreement becomes effective.

2.2.3.2 Pursuant to the terms of Section 2.4.2 hereof.

2.2.3.3 Except as otherwise provided in this Agreement, upon fifteen (15) days written notice from one Party, if that Party previously notified the other Party in writing that the other Party was in breach of a material provision of this Agreements, and the other Party failed to correct the breach within thirty (30) days from receipt of written notice and to notify the first Party in writing that the breach has been corrected. If a Party fails to exercise its right to terminate the agreement pursuant to this Section 2.2.3.3 within sixty (60) days of a notice of breach, it shall be required to provide a new notice of breach in accordance with this section 2.2.3.3 before it can terminate the Agreement.

2.3 Proof of Authorization (POA)

2.3.1 Each Party shall be responsible of obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

2.4 Performance

2.4.1 Amounts payable under this Agreement are due and payable within twenty (20) calendar days after bill date. If the payment due date is not a business day, the payment shall be due the next business day.

2.4.2 Except for amounts disputed pursuant to Section 2.4.5 herein, the following shall apply:

2.4.2.1 If payment is not received thirty (30) days from the bill date, the billing Party may provide written notice to the billed Party that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15th) day following the date of the notice. If the billing Party does not refuse additional applications for service on the date specified in the notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to refuse additional applications for service without further notice.

2.4.2.2 If the billed Party fails to make any payment following the notice under Section 2.4.2.1, the billing Party may, on thirty (30) days written notice to the billed Party's designated representative, discontinue the provision of existing services to the billed Party at any time thereafter. Such notice will be sent by certified mail, return receipt requested. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If the billing Party does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to discontinue the provision of the services to the billed Party without further notice.

2.4.2.3 If payment is not received within sixty (60) days of the notice under Section 2.4.2.1, the billing Party may terminate this Agreement.

2.4.3 After disconnect procedures have begun, the billing Party shall not accept service orders from the billed Party until all unpaid charges are paid in full in immediately available funds. The billing Party shall have the right to require a deposit equal to two month's charges (based on the highest previous month of service from the billed Party) prior to resuming service to the billing Party after disconnect for nonpayment has occurred.

2.4.4 In the event the billing Party properly terminates the provisioning of any services to the billed Party for any reason, and subject to the requirements of the Commission and the FCC, the billed Party shall be responsible for providing any and all necessary notice to its end users of the termination. The billing Party shall not be responsible for providing such notice to the billed Party's end users unless required by the Commission or the FCC.

2.4.5 Disputes: The billed Party shall, in writing, advise the billing Party of any disputes with respect to billing within forty-five (45) calendar days of the receipt of the invoice and include the specific amount (the "Disputed Amount"), details and reasons for disputing each item. If the billed Party provides written notice of such dispute within thirty (30) days of receipt of an invoice, it shall not be required to pay the Disputed Amount and the provisions of Sections 2.4.2 shall not apply to the Disputed Amount during the pendency of this dispute. The Parties agree to expedite the investigation of any Disputed Amount in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in favor of the billing Party, the billed Party shall thereafter pay to the billing Party any unpaid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute. Should the dispute be resolved in favor of the billed Party, the billing Party shall pay to the billed Party any paid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute, and shall remove any unpaid Disputed Amount resolved in favor of the billed Party from the billed Party's invoices. If a Disputed Amount remains unpaid thirty (30) days after final resolution of such dispute, the billing Party may disconnect service to the billed Party upon providing ten (10) days' written notice.

2.5 Taxes

2.5.1 Any federal, state or local taxes including but not limited to sales, use, excise, franchise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever required by law, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to qualify for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

2.6 Insurance

2.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain all insurance required by law and Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage and contractual liability with respect to the liability assumed by that Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit. Each Party will provide a certificate of insurance evidencing coverage within 90 days of execution of this Agreement and every year thereafter that this Agreement is in effect.

2.7 Force Majeure

2.7.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in

performance caused by these circumstances is beyond the Party's control and without the Party's fault or negligence. If affected by a Force Majeure Event, a Party shall give prompt notice to the other Party, and shall be excused from performance of its obligations hereunder on a Day to Day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the affected Party agrees to provide service to the other Party at a level equivalent to the level the affected Party provides itself.

2.8 Limitation of Liability

2.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to the other Party under this Agreement during the contract year in which the cause accrues or arises.

2.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

2.8.3 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of a Party's respective agents, subcontractors, or employees.

2.8.4 Nothing contained in this Section shall limit either Party's indemnification obligations pursuant to Section 2.9 of this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

2.9 Indemnity

2.9.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party (the Indemnified Party) and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property,

whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

2.9.2 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

2.9.3 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

2.9.4 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

2.10 Warranties

EACH PARTY HEREBY STATES AND THE OTHER PARTY HEREBY ACKNOWLEDGES THERE DOES NOT EXIST ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

2.11 Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party, except that either Party may assign or transfer this agreement in connection with the acquisition of all or substantially all of the Party by another entity with sixty (60) days written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio.

2.12 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute designation of either Party as a legal representative or agent of the other Party, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by other Party. Except as otherwise expressly provided in this Agreement, neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual.

2.13 Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

2.14 Nondisclosure

2.14.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans end user customer specific, facility specific, or usage specific information, other than end user customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the other Party at the time of delivery, or by written within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Confidential Information"), shall remain the property of disclosing Party.

2.14.2 Upon termination of this agreement or any time during this Agreement upon request by the disclosing Party, the other Party shall return all tangible copies of Confidential Information, whether written graphic or otherwise.

2.14.3 The receiving Party shall keep the disclosing Party's Confidential Information confidential. In no case shall retail marketing, sales personnel, or strategic planning have access to such Confidential Information. Each Party shall use the other Party's Confidential Information only in connection with this Agreement.

2.14.4 Each Party agrees that the other Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement and that a disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

2.15 Survival

Any liabilities or obligations by a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

2.16 Controlling Law

This Agreement is made in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

2.17 Notices

Any notices required by or concerning this Agreement shall be in writing sent by certified mail, return receipt requested to MVC, MITS, and Midcontinent at the addresses shown below:

Missouri Valley Communications, Inc.
CEO
P.O. Box 600
Hwy 13 South
Scobey, MT 59263
Phone: 406-783-2200
Fax: 406-783-5283

With copy to:

MITS
P.O. Box 5237
2021 11th Ave. Suite 12
Helena, MT 59604-5237
Phone: 406-443-1940
Fax: 406-443-2880

And to Midcontinent at the address shown below:

Midcontinent Communications
Mary Lohnes, Regulatory Affairs Manager
3901 N. Louise Avenue
Sioux Falls, SD 57107
Phone (605) 357-5459
Fax (605) 339-4419

With copy to:

J.G. Harrington
Dow Lohnes, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
Phone (202) 776-2818
Fax (202) 776-2222

Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section.

2.18 Responsibility of Each Party

Each Party is an independent contractor with respect to the other party, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

2.19 No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties and not for any other person. This Agreement will not provide any person not a Party to this Agreement with

any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

2.20 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Neither Party may use the other Party's logo or any other symbol or language for which the other Party has trademark or copyright protection.

2.21 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

2.22 Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, each Party agrees to keep and maintain in full force and in effect all permits, licenses, certificates, and other authorizations needed to perform obligations hereunder.

2.23 Compliance with the Communications Assistance Law Enforcement Act of 1994

Each Party represents and warrants that any equipment, facilities or services provided under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance.

2.24 Cooperation

The Parties agree that this Agreement involves the provision of MVC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, and provisioning.

2.25 Amendments

Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing the desired amendment and proposed language changes. This Agreement can only be amended in writing, executed by duly authorized representatives of the Parties.

2.26 Entire Agreement

This Agreement constitutes the entire agreement between MVC and Midcontinent and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

2.27 Dispute Resolution

2.27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 2.27 shall be the preferred, but not the exclusive remedy for all disputes between MVC and Midcontinent arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 2.27 shall limit the right of either Party, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 2.27. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

2.27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted on an informal basis. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

2.27.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 2.27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3)

arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 2.27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute.

The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in a mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

2.27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 2.27.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

2.27.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. MVC and Midcontinent shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either MVC or Midcontinent may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between MVC and Midcontinent, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

2.27.4 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

2.27.5 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any

injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review, a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

2.27.6 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 2.14 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide prior written notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

2.27.7 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

2.27.8 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

2.27.9 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

2.27.10 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

2.27.11 This Section does not apply to any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, trade name, trade dress or service mark of a Party.

Section 2.28 Effect on Resale Agreement

The Resale Agreement between the Parties dated November 29, 2004 remains in effect according to its terms.

Section 3.0 - SERVICES PROVIDED UNDER THIS AGREEMENT

3.1 Interconnection

Interconnection shall be governed by Attachment 1 to this Agreement.

3.2 Pre-Ordering and Ordering

Pre-ordering and ordering shall be governed by the terms of Attachment 2 to this Agreement.

3.3 Local Number Portability

Local number portability shall be governed by the terms of Attachment 3 to this Agreement.

3.4 Ancillary Services

Ancillary services shall be governed by the terms of Attachment 4 to this Agreement.

3.5 Pricing

Pricing shall be governed by the terms of Attachment 5 to this Agreement.

Section 4.0 - DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms maybe defined elsewhere in this Agreement, as well as terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the Effective Date of this Agreement.

“Agreement” refers to the interconnection agreement signed by both parties.

“Commission” means the North Dakota Public Service Commission.

“Confidential Information” has the meaning set forth in Section 2.14 of this Agreement.

“Parties” means MVC or Midcontinent collectively.

“Party” means either MVC or Midcontinent as applicable.

“Tariff” as used throughout this Agreement refers to the MVC North Dakota tariff filed with the Commission.

“Telecommunications Service(s)” means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information sent and received.

“Work Locations” means any real estate that MVC or Midcontinent owns, leases or licenses or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Section 5.0 - SIGNATURE PAGE

By Signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Resale Agreement.

Midcontinent Communications
Investor, LLC, Managing Partner
Midcontinent Communications

Missouri Valley Communications, Inc.

Signature

Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

Date

Date

GLOSSARY

1. General Rule

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

2. Definitions

2.1 ACCESS SERVICE REQUEST (ASR).

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

2.2 ACT.

The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.

2.3 AFFILIATE.

Shall have the meaning set forth in the Act.

2.4 APPLICABLE LAW.

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this Agreement.

2.5 AUTOMATIC NUMBER IDENTIFICATION (ANI).

The signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

2.6 CALLING PARTY NUMBER (CPN).

A Signaling System 7 (SS7) parameter that identifies the calling party's telephone number.

2.7 CENTRAL OFFICE.

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.8 CENTRAL OFFICE SWITCH.

A switch used to provide Telecommunications Services including but not limited to an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office/Tandem Office Switch.

2.9 COMMON CHANNEL SIGNALING (CCS).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.10 COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC).

Any corporation or other person legally able to provide Local Exchange Service in competition with MVC.

2.11 CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.12 DIGITAL SIGNAL LEVEL 1 (DS1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.13 DIGITAL SIGNAL LEVEL 3 (DS3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.14 DIRECT INTERCONNECTION FACILITIES.

Dedicated one-way or two-way transport facilities installed between Midcontinent's switch (or its equivalent) and MVC's switch.

2.15 END OFFICE SWITCH OR END OFFICE.

End Office Switch is a switch in which the End User Customer station loops are terminated for connection to trunks. The End User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.16 END USER CUSTOMER.

A retail business or residential end-user subscriber to Telephone Exchange Service provided by either of the Parties.

2.17 END USER CUSTOMER LOCATION

The physical location of the premise where an End User Customer makes use of Telephone Exchange Service.

2.18 EXCHANGE AREA.

Means the geographic area that has been identified by MVC for its provision of Telephone Exchange Service.

2.19 FCC.

The Federal Communications Commission.

2.20 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC).

Shall have the meaning stated in the Act. For purposes of this Agreement, MVC is an ILEC .

2.21 INTEREXCHANGE CARRIER (IXC).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services.

2.22 INTERLATA TRAFFIC.

Telecommunications traffic that originates in one LATA and terminates in another LATA.

2.23 INTERCEPT MESSAGE

An Intercept Message is an announcement on the abandoned telephone number which provides the Customer's new number or other appropriate information.

2.24 INTRALATA TRAFFIC

Telecommunications traffic that originates and terminates in the same LATA.

2.25 INTERNET PROTOCOL CONNECTION

The IPC is the connection between the Internet Service Provider (ISP) and the customer where end user information is originated or terminated utilizing internet protocol.

2.26 ISDN USER PART (ISUP).

A part of the SS7 protocol that defines call setup messages and call takedown messages.

2.27 ISP-BOUND TRAFFIC.

ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet Service Provider (ISP) that is physically located in an area within the local/EAS exchange of the originating End User Customer. A call placed on a non-local basis (e.g., a toll call or an 8YY call) to an ISP shall not be treated as ISP-Bound Traffic, and the rates, terms and conditions for intraLATA and/or interLATA calling shall apply to such calls, including without limitation rating and routing according to the terminating party's interstate or intrastate exchange access tariffs. IP-Enabled Traffic is not ISP-Bound Traffic.

2.28 JURISDICTIONAL INDICATOR PARAMETER (JIP).

JIP is a six-digit number that provides a unique identifier representing the originating carrier. JIP is defined in the Alliance for Telecommunications Industry Solutions Reference Document ATIS-0300011.

2.29 LOCAL ACCESS AND TRANSPORT AREA (LATA).

Shall have the meaning set forth in the Act.

2.30 LOCAL NUMBER PORTABILITY (LNP)

LNP is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

2.31 LINE INFORMATION DATABASE (LIDB).

One or all, as the context may require, of the Line Information databases used by MVC and owned by other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by MVC and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

2.32 LOCAL EXCHANGE CARRIER (LEC).

The term "local exchange carrier" means any company that is authorized by the state public utility commission to provide local exchange and exchange access services. Such term does not include a company engaged in the provision of a commercial mobile service.

2.33 LOCAL EXCHANGE ROUTING GUIDE (LERG).

The Telcordia Technologies reference customarily used to identify NPA/NXX routing and homing information, as well as network element and equipment designation.

2.34 LOCAL/EAS TRAFFIC.

Any call dialed on a local basis that originates from an End User Customer in one exchange and terminates to an End User Customer in either the same exchange, or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in MVC's tariff. The exchanges and NPA-NXX of each Party in the MVC tariff are listed in Exhibit 1. As clarification of this definition and for reciprocal transport and termination compensation, Local/EAS Traffic does not include traffic that originates from or is directed to or through an ISP.

2.35 NEW SERVICE PROVIDER (NSP).

When an End-User Customer is changing its local exchange service from one provider to another, the NSP is the provider with whom the customer will reside at the completion of the change.

2.36 NORTH AMERICAN NUMBERING PLAN (NANP).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

2.37 NUMBERING PLAN AREA (NPA).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.38 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number). Each NXX Code contains 10,000 station numbers.

2.39 OLD SERVICE PROVIDER (OSP).

When an End-User Customer is changing its local exchange service from one provider to another, the OSP is the provider from whom the End-User Customer is disconnecting.

2.40 POINT OF INTERCONNECTION (POI).

The physical location(s) within MVC's network, at which the Parties' networks meet for the purpose of exchanging Local/EAS Traffic.

2.41 RATE CENTER AREA.

A Rate Center Area is a geographic location, which has been designated by MVC as being associated with a particular NPA-NXX code, which has been assigned to MVC for its provision of Telephone Exchange Service. Rate Center Area is normally the same as the boundary of the MVC Exchange Area as defined by the Commission.

2.42 RATE CENTER

A Rate Center is the finite geographic point identified by a specific V&H coordinate which is used by MVC to measure, for billing purposes, distance sensitive transmission services associated with the specific rate center; provided that a Rate Center cannot exceed the boundaries of the MVC Exchange Area as defined by the Commission.

2.43 SIGNALING SYSTEM 7 (SS7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). MVC and Midcontinent currently utilize this out-of-band signaling protocol.

2.44 SWITCHED ACCESS SERVICE.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 8XX access, and 900 access.

2.45 TANDEM SWITCH.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among end office switches and between and among end office switches and carriers' aggregation points, points of termination, or point of presence, and to provide Switched Exchange Access Services.

2.46 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC.

Telephone Exchange Service traffic that originates on Midcontinent's network, and is transported through an MVC Tandem to the Central Office of a Midcontinent, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant MVC Tandem to which Midcontinent delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

2.47 TELCORDIA TECHNOLOGIES.

Formerly known as Bell Communications Research. The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

2.48 TELECOMMUNICATIONS CARRIER.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier under the Telecommunications Act only to the extent that it is engaged in providing telecommunications services.

2.49 TELECOMMUNICATIONS SERVICE.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2.50 TELECOMMUNICATIONS TRAFFIC.

"Telecommunications Traffic" means Telecommunications Service traffic exchanged between an ILEC and a Telecommunications Carrier other than a CMRS provider, except for Telecommunications Service traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.

2.51 TELEPHONE EXCHANGE SERVICE.

The term "telephone exchange service" means shall have the meaning set forth in 47 U.S.C. Section 3 (47) of the Act.

2.52 VOIP or IP-ENABLED TRAFFIC.

VoIP means voice over Internet Protocol, which includes any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:

- (i) Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and
- (ii) Voice traffic originated on the PSTN, and which terminates on IPC.

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 Traffic within the Williston, ND exchange (including 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 ISP-Bound Traffic and shall not apply to any other traffic or service.
- 1.2 This Attachment also describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telecommunications Traffic between the respective End-User Customers of the Parties pursuant to Section 251 (a) and (b) of the Act and the compensation for such facilities and traffic exchanged.
- 1.3 Rate Arbitrage
 - 1.3.1 Each Party agrees that it will not knowingly provision any of its services or the services of a third party in a manner that permits the circumvention of applicable switched access charges by the other Party (“Rate Arbitrage”) and/or the utilization of the physical connecting arrangements described in this Agreement to permit the delivery to the other Party of traffic not covered under this Agreement through the POI on Local Interconnection Trunks. This Rate Arbitrage includes, but is not limited to, third-party carriers, traffic aggregators, and resellers.
 - 1.3.2 If any Rate Arbitrage and/or delivery of traffic not covered under this Agreement through the local interconnection trunks is identified, the Party causing such Rate Arbitrage also agrees to take all reasonable steps to terminate and/or reroute any service that is permitting any of that Party’s End-User Customers or any entity to conduct Rate Arbitrage or that permits the End-User Customer or any entity to utilize the POI for the delivery or receipt of such excluded traffic through the local interconnection trunks. Notwithstanding the foregoing, if any Party is found to be in violation of this Section, until such time as the Rate Arbitrage or incorrect routing of traffic is resolved, that Party shall pay applicable access charges to the other Party for traffic subject to Rate Arbitrage or that is incorrectly routed.
 - 1.3.3 If either Party suspects Rate Arbitrage from the other Party, the Party suspecting arbitrage (“Initiating Party”) shall have the right to audit the other Party’s records to ensure that no Rate Arbitrage and/or the delivery of traffic not covered under this Agreement is taking place. Both Parties shall cooperate in providing records required to conduct such audits. Upon

request by MVC, Midcontinent shall be required to obtain any applicable records of any customer or other third party utilizing Midcontinent's interconnection with MVC. The Initiating Party shall have the right to conduct additional audit(s) if the preceding audit disclosed such Rate Arbitrage provided, however, that neither Party shall request an audit more frequently than is commercially reasonable once per calendar year.

- 1.3.4 The parties shall work cooperatively to identify and minimize phantom traffic, calls for which identifying information is missing or masked in ways that frustrate intercarrier billing, or other unclassified traffic, and to ensure proper billing information for all traffic exchanged between the Parties consistent with industry standards.

2. Physical Connection

- 2.1 The Parties shall exchange Local/EAS Traffic and ISP-Bound Traffic over Direct Interconnection Facilities between their networks. The Parties agree to physically connect their respective networks so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) designated at MVC's switch (WLSTNDBCDS0). Interconnection shall be completed within sixty (60) days of the effective date of this Agreement.
- 2.2 Direct Interconnection Facilities between the Parties' networks shall be provisioned as two-way interconnection trunks. The dedicated interconnection facilities shall meet the Telcordia BOC Notes on LEC Network Practice No. SR – TSV – 002275. The parties may connect using Internet Protocol if they mutually agree to do so.
- 2.3 MVC and Midcontinent may utilize existing and new wireline Direct Interconnection Facilities for the mutual exchange of Local/EAS Traffic and ISP-Bound Traffic and toll traffic. Toll traffic will be provisioned on separate trunk groups within the same facility as Local/EAS Traffic and ISP-Bound Traffic. The charges for usage and underlying trunks shall be subject to the appropriate compensation based on jurisdiction.
- 2.4 Physical Interconnection
 - 2.4.1 Trunk Types
 - 2.4.1.1 Local Interconnection Trunks
 - 2.4.1.1.1 The Parties will establish local trunk groups for the exchange of Local/EAS Traffic and ISP-Bound Traffic ("Local Interconnection Trunks") on the Direct Interconnection Facility. The Parties agree that all Local/EAS Traffic and ISP-Bound Traffic exchanged between them will be on trunks exclusively dedicated to such traffic. Neither Party will terminate InterLATA

toll traffic or originate untranslated traffic to service codes (e.g. 800, 888) over Local Interconnection Trunks.

- 2.4.1.1.2 If the Parties' originated Local/EAS Traffic and ISP-Bound Traffic is exchanged utilizing the same two-way Local Interconnection Trunk, both Parties will mutually coordinate the provisioning and quantity of trunks to be utilized in this arrangement

2.4.1.2 Access Trunks

- 2.4.1.2.1 Access traffic shall not be routed on the Local Interconnection Trunks. Separate trunk groups for such Access Traffic must be established on the Direct Interconnection Facility. Standard access compensation arrangements from MVC's respective tariffs will apply to Access Traffic terminated over the Access Trunks.

2.4.2 Fiber Meet Point

- 2.4.2.1 Fiber Meet Point is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at an point of interconnection. The location where one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends is at the POI.

- 2.4.2.2 If both Parties mutually agree to interconnect pursuant to a Fiber Meet Point, Midcontinent and MVC shall jointly engineer and operate a fiber optic transmission system. The Parties shall interconnect their transmission and routing of Local/EAS Traffic and ISP-Bound Traffic via a local channel facility at the DS1 or DS3 level. The Parties shall work jointly to determine the specific fiber optic transmission system. Midcontinent's fiber optic transmission equipment must be compatible with MVC's equipment. Each Party reserves the right to determine the equipment it employs for service.

- 2.4.2.3 Each Party at its own expense, shall procure, install and maintain the agreed-upon fiber optic transmission system in its network.

- 2.4.2.4 The Parties shall mutually agree upon a Fiber Meet Point on the MVC network within the borders of the MVC Williston Exchange Area. The Parties shall deliver its fiber optic facilities to the Fiber Meet Point. MVC shall make all necessary preparations to receive, and to allow and enable Midcontinent to deliver, fiber optic

facilities with sufficient spare length to reach the fusion splice point for the Fiber Meet Point.

2.4.2.5 Midcontinent shall deliver and maintain its fiber strands wholly at its own expense. Upon request by Midcontinent, MVC shall allow Midcontinent access to the Fiber Meet Point entry point for maintenance purposes as promptly as possible.

2.4.2.6 The Parties shall jointly coordinate and undertake maintenance of the fiber optic transmission system. Each Party shall be responsible for maintaining the components of its own fiber optic transmission system.

2.4.2.7 Each Party will be responsible for providing its own transport facilities to the Fiber Meet Point.

2.5 Facility Sizing

The Parties will mutually agree on the appropriate sizing of the interconnection and transport facilities. The capacity of facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. Midcontinent will order trunks in the agreed-upon quantities via an Access Service Request (“ASR”).

2.6 If Midcontinent’s request requires MVC to build new facilities (e.g. installing new fiber or additional electrical trunks) to be used by Midcontinent, Midcontinent will bear the cost of construction. Payment terms for such costs will be negotiated between the Parties on an individual case basis. No Party will construct facilities that require the other Party to build unnecessary facilities.

2.7 The Midcontinent shall be responsible for establishing 911 trunks with the designated 911 vendor. Midcontinent may purchase transport for such 911 trunks from MVC subject to applicable MVC tariff rates.

2.8 Interface Types:

The initial interface will be electrical and at the DS1 level. Any changes to the interface type will be mutually agreed upon by the Parties.

2.9 Programming:

It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the LERG. Each Party will program the numbers of the other Party in accordance with industry standard intervals, including without limitation the requirements of the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee of the Alliance for Telecommunications Industry Solutions, document number INC-95-0407-008, as revised.

2.10 Equipment Additions:

Where additional equipment is required, such equipment will be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for the Parties' internal customer demand.

2.11 *[Missouri Valley proposed language eliminating dispute resolution for impasses concerning changes to interconnection under Section 2.2, 2.4.2 or 2.8 is omitted. Midcontinent proposes to have the general dispute resolution provisions for the Agreement, contained in Section 2.27 of the General Terms and Conditions, apply.]*

3. Compensation

3.1 Facilities Compensation

3.1.1 For Direct Interconnection Facilities, Midcontinent may utilize a Fiber Meet Point, lease facilities from MVC or lease facilities from a third party to reach the POI.

3.1.2 Each Party shall be responsible for the cost of Direct Interconnection Facilities on its side of the POI. Each party is responsible for any transport, transiting, or switching charges assessed by any third party on its respective side of the POI. Neither Party shall have any obligation to bear any charges, expenses or other costs assessed in connection with transporting, transiting or switching traffic on the other Party's side of the POI.

3.1.3 If Midcontinent chooses to lease Direct Interconnection Facilities from the MVC to reach the POI, Midcontinent shall compensate MVC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with MVC's network at the rates contained in the applicable MVC tariff.

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.

3.1.5 In the event MVC is required to modify its network to accommodate the interconnection request made by Midcontinent, Midcontinent agrees to pay MVC reasonable cost-based charges for modifications, provided that rates under an accepted tariff shall be deemed cost based and that MVC

shall not be required to perform a cost study. In accordance with Section 3.1.2, if Midcontinent uses a third party network provider to reach the POI, Midcontinent will bear all third party carrier charges for facilities and traffic in both directions.

3.2 Traffic Termination 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.]

or

[Reciprocal compensation shall apply only to the transport and termination of Local/EAS Traffic and ISP-Bound Traffic and shall not apply to any other traffic or service. The parties agree to bill and pay each other monthly for Local/EAS Traffic and ISP-Bound Traffic exchanged under this Agreement unless the combined Local/EAS Traffic and ISP-Bound 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 combined Local/EAS Traffic and ISP-Bound Traffic exchanged falls between 60%/40% in either direction. When the actual usage data for three (3) consecutive months indicates that the combined Local/EAS Traffic and ISP-Bound Traffic 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 combined Local/EAS Traffic and ISP-Bound 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 combined Local/EAS Traffic and ISP-Bound 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 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.

3.2.2 Reciprocal compensation for Local/EAS Traffic shall be at the rate of \$0.004/minute for the first year of this Agreement and shall be reduced by \$0.001/minute on each anniversary of the effective date of this Agreement. Compensation for ISP-Bound Traffic shall be {at the same rate as reciprocal compensation} {at the rate of \$0.0007/minute until the rate for reciprocal compensation is reduced to zero, when compensation for ISP-Bound Traffic shall be reduced to zero}.

3.2.3 *[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.]*

3.2.4 Compensation under this Section 3.2 shall be adjusted to conform with the requirements of the rules of the FCC concerning intercarrier compensation. For avoidance of doubt, this Agreement is not intended to supersede any requirements concerning rates for intercarrier compensation that would be applicable in the absence of an interconnection agreement between the Parties.

3.3 For the purposes of this Agreement, Jurisdiction of IP-Enabled Traffic is determined by the physical location of the End-User Customer originating IP-Enabled Traffic. Signaling information associated with IP-Enabled Voice Traffic must comply with Section 5 of this Interconnection Attachment. IP-Enabled Traffic will be treated as either Local/EAS Traffic or Switched Access Traffic in accordance with the location of the End-User Customer as determined pursuant to this Section 3.3 and Section 4.2.

3.4 Nothing in this Section shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local/EAS Traffic and ISP-bound Traffic, including but not limited to inter-office facilities, access traffic, wireless traffic, and IP-PSTN Traffic or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the billing arrangement described in this Section.

3.5 Neither Party shall represent Switched Access Traffic as Local Traffic or ISP-bound Traffic for purposes of determining compensation for the call.

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 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 all transferred customers for the six month period immediately prior to the date the transition begins, payable by Midcontinent for six (6) months following the date of transfer for each transferred customer. (As an illustration only, if the average monthly interstate and intrastate access charges for customers being transferred is determined prior to the start of the transition to be \$6.00 per month, the monthly Transition Compensation per transferred customer shall be \$4.50). The Parties' performance under Attachment 2 will include the exchange of information for determination of per customer Transitional Compensation amounts.

4. Routing

- 4.1 Both Parties acknowledge that traffic will be routed in accordance with Telcordia Traffic Routing Administration (TRA) instructions.
- 4.2 Both Parties shall adhere to the North American Numbering Plan (NANP) guidelines. The Parties agree that if a Party assigns telephone numbers from an NPA/NXX to an End-User Customer outside the Rate Center Area with which the NPA/NXX is associated, the location of the calling and called End-User Customers shall be used to determine the jurisdiction of the Telecommunications Traffic for purposes of determining the appropriate compensation mechanism. Further, for End-User Customers to be considered physically located in the Rate Center such End-User Customers must have valid E911 service with a corresponding record in the serving ALI Database.
- 4.3 Once Direct Interconnection Facilities are established, both Parties shall route all traffic to the other Party utilizing the Direct Interconnection Facilities except in the case of an emergency or temporary equipment failure. Should either Party determine that the other Party is routing its originated traffic indirectly via a third party tandem, the originating Party agrees to update its routing and translations tables to move such traffic to the Direct Interconnection Facilities within five (5) business days.
- 4.4 Neither Party shall route un-translated traffic to service codes (e.g. 800, 888, 900) over the Local Interconnection Trunks.
- 4.5 N11 Codes: Neither Party shall route N11 codes (e.g., 411, 611, 711, and 911) over dedicated facilities.

5. Signaling

- 5.1 Accurate Calling Party Number ("CPN") associated with the End-User Customer originating the call must be provided. Accurate CPN is:
 - 5.1.1 CPN that is a dialable working telephone number, that when dialed, will reach the End-User Customer to whom it is assigned, at that End-User Customer's Location.

- 5.1.2 CPN that has not been altered.
- 5.1.3 CPN that is not a charged party number.
- 5.1.4 CPN that follows the North American Numbering Plan Standards and can be identified in numbering databases and the LERG as an active number.
- 5.1.5 CPN that is assigned to an active End-User Customer.
- 5.1.6 CPN that is associated with the Rate Center of the specific End-User Customer Location.

5.2 Signaling:

The Parties will connect their networks using SS7 signaling as defined in applicable industry standards including ISDN User Part (“ISUP”) for trunk signaling and Transaction Capabilities Application Part (“TCAP”) for common channel signaling-based features in the connection of their networks. CPN shall be available for at least 95% of the local calls. Signaling information shall be shared between the Parties at no charge to either Party.

5.3 Signaling Parameters:

MVC and Midcontinent are required to provide each other with the proper signaling information (e.g. originating accurate CPN, JIP, and destination called party number, etc.) to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be provided including CPN, JIP, and Originating Line Information Parameter (OLIP) on calls to 8XX telephone numbers, Calling Party Category, Charge Number, etc. All privacy indicators will be honored. Both Parties will use the location routing number (LRN) associated with the originating number to populate the JIP field. In addition, each Party agrees that it is responsible for ensuring that all CCS signaling parameters are accurate and it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN or JIP. CPN shall, at a minimum, include information that accurately reflects the physical location of the End-User Customer that originated and/or dialed the call, in accordance with Section 4.2 and 5.1.6.

5.4 Grade of Service:

Each Party will provision its network to provide a designed blocking objective of a P.01.

6. Network Management:

6.1 Protective Controls:

Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic towards each Party's network, when required to protect the public switched network from congestion or failure, or focused overload. Midcontinent and MVC will immediately notify each other of any protective control action planned or executed.

6.2 Mass Calling:

Both Parties will cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes. The Parties agree that the promotion of mass calling services is not in the best interest of either Party. If one Party's network is burdened repeatedly more than the other Party's network, the Parties will meet and discuss the cause and impact of such calling and will agree on how to equitably share the costs and revenues associated with the calls and on methods for managing the call volume.

6.3 Network Harm:

Neither Party will use any service related to or provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur, or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required, provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- 6.3.1 Promptly notify the other Party of such temporary discontinuance or refusal;
- 6.3.2 Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- 6.3.3 Inform the other Party of its right to bring a complaint to the Commission, FCC, or a court of competent jurisdiction.

7. Proper Classification of Traffic

- 7.1 Nothing herein shall in any manner reduce or otherwise limit or discharge the Parties' obligations under the Agreement to properly classify traffic delivered under the Agreement in accordance with the terms of this Agreement and its Attachments, including but not limited to Section 1.3 of this Interconnection Attachment.

- 7.2 If the terminating Party determines in good faith in any month that any traffic originated by the other Party is classified by the other Party as traffic subject to the compensation rate for Local Traffic or EAS (mandatory or optional) traffic by the terms of this Agreement, when in reality the traffic is subject to the terminating Party's or state or federal switched access tariff the Parties agree:
- 7.2.1 The terminating party will notify the originating Party as soon as traffic has been incorrectly classified has been identified. Within one hundred eighty days (180) days of the end of the billing period for the affected traffic, the terminating Party will provide sufficient call detail records or other information (including the reasons that the terminating Party believes the traffic is misidentified) to permit the originating Party to investigate and identify the traffic the terminating Party has determined is misidentified;
- 7.2.2 The originating Party shall correct the classification for any traffic that was misidentified or unidentified and pay the appropriate tariffed switched access rates for the applicable traffic going forward, including for traffic terminated but not yet billed, and/or a true-up amounts for the previous 12 months for traffic already billed and paid; and
- 7.2.3 Where the appropriate classification of such traffic is indeterminable, such traffic will be rated in accordance with Section 8 or 9 of this Attachment, as appropriate.
- 7.2.4 In the event the originating Party disagrees with the terminating Party's determination that traffic has been misidentified, the originating Party will provide written notice of its dispute within sixty (60) days of notification under 7.1.1 and providing all documentation that is the basis for originating Party's challenge of the terminating Party's claim. If the parties are not able to mutually agree as to the proper treatment of the traffic based upon the documentation produced, the dispute resolution procedures of this Agreement shall apply.

8. Unclassified Traffic

- 8.1 The Parties acknowledge that certain traffic, due to the technical nature of its origination, may be properly transmitted without all Traffic Identifiers. In such instances, the Parties agree that such traffic shall be considered "Unclassified Traffic" if it can be affirmatively demonstrated that the missing Traffic Identifiers were not stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned by the Party transmitting the traffic or with that Party's knowledge or consent. Otherwise, the traffic shall be considered Misclassified Traffic as described below.
- 8.2 If the percentage of traffic transmitted over Direct Interconnection Facilities under this Agreement with accurate Traffic Identifiers including CPN and JIP in a given month is greater than or equal to 95%, any remaining calls (those transmitted

without accurate Traffic Identifiers) transmitted over those Facilities will be billed at rates calculated consistent with, and in proportion to the identified traffic exchanged under this Agreement. If, however, the percentage of Local Termination Traffic transmitted with accurate Traffic Identifiers (including for this purpose any Misclassified Traffic) in a given month falls below 95%, the Originating Party agrees to pay the terminating Party's intrastate access rates for all Unclassified Traffic transmitted over Direct Interconnection Facilities for the applicable month.

8.3 Subject to Section 4.3, the following provisions shall apply traffic transmitted from one Party to the other Party via facilities of other carriers:

8.3.1 Traffic that is transmitted in a given month with accurate Traffic Identifiers including CPN and JIP shall be billed at rates consistent with the classification of that traffic.

8.3.2 If the total of the percentage of the Party's traffic to the other Party transmitted via the facilities of other carriers is less than 5% in a given month, all traffic transmitted via such facilities that is not subject to Section 8.3.1 will be billed at rates calculated consistent with, and in proportion to the identified traffic exchanged under this Agreement during that month.

8.3.3 If the total of the percentage of the Party's traffic to the other Party transmitted via the facilities of other carriers is greater than or equal to 5% in a given month, all traffic transmitted via such facilities that is not subject to Section 8.3.1 shall be billed at the terminating Party's intrastate access rates.

8.3.3.1 This Section 8.3.3 shall not apply to traffic not subject to Section 8.3.1 if the transmitting Party uses the facilities of other carriers to transmit traffic because the direct interconnection facilities dedicated to the transmitting Party's traffic by the receiving Party experienced blocking greater than that permitted in Section 5.4 of this attachment due to lack of sufficient capacity and/or trunks to accept all of the transmitting Party's traffic, and in such cases Section 8.3.2 shall apply to all traffic transmitted via the facilities of other carriers.

8.3.3.2 Section 8.3.3.1 shall not apply if the transmitting Party is responsible for ordering affected facilities from the receiving Party and failed to order sufficient capacity to accommodate its traffic requirements.

8.3.4 For avoidance of doubt, traffic carried by an end user's preferred interexchange carrier shall not be considered traffic transmitted via the facilities of other carriers. Such traffic shall be subject to access charges

to be paid by the interexchange carrier in accordance with applicable regulatory requirements.

9. Misclassified Traffic

- 9.1 As used in this Agreement, “Misclassified Traffic” shall mean Termination Traffic that has Traffic Identifiers stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned.
- 9.2 In addition to the terminating Party’s other rights and remedies with respect to Misclassified Traffic, the originating Party agrees to pay the terminating Party’s intrastate access rates with respect to all Misclassified Traffic.
- 9.3 Notwithstanding anything herein to the contrary, the Parties agree that if more than two percent (2%) of the total Termination Traffic exchanged by the originating Party under this Agreement in any month is Misclassified Traffic, the originating Party shall be in Default of this Agreement, subject to Section 3 of the General Terms and Conditions.

**Pre-Ordering, Ordering, Provisioning,
Maintenance and Repair**

Pre-Ordering, Ordering, Provisioning, Maintenance and Repair

1. Pre-Ordering

- 1.1 The Parties will provide access to pre-order functions to support the requesting Party's transfer of customers. The Parties acknowledge that ordering requirements necessitate the use of current pre-order information to accurately build service orders. The following lists represent pre-order functions that are available.
- 1.2 Release of retail Customer Proprietary Network Information (CPNI) and account information for pre-ordering will include: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection until after the End User Customer requests that his or her Local Service Provider be changed to that Party, and a Letter of Authorization (LOA) for release of CPNI complies with conditions as described in Section 3.3 of this Attachment.
- 1.3 The Parties will provide the information on the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and customer record information. MVC and Midcontinent will include the development and introduction of the new change management process. The Parties shall provide such information in accordance with industry standards as set by the Alliance for Telecommunications Industry Solutions via paper copies of End User Customer record information.
- 1.4 Each Party will obtain access to End User Customer record information only in strict compliance with applicable laws, rules, or regulations of the state in which the service is provided or FCC, including without limitation Section 222 of the Act and the FCC's rules in 47 C.F.R. Part 64, subpart U and any successor provisions. Each Party reserves the right to audit the other Party's access to End User Customer record information for customers of the auditing Party. If an audit of access to End User Customer record information reveals that the audited Party is accessing End User Customer record information without having obtained the proper LOA, the auditing Party, upon reasonable notice to the audited Party, may take corrective action. All such information obtained through an audit shall be deemed Information covered by the Proprietary and Confidential Information Section 11 in the General Terms and Conditions of this Agreement.

2. Ordering

- 2.1 Midcontinent agrees to comply with industry standards as set by the Alliance for Telecommunications Industry Solutions, which are incorporated by reference in this Agreement, and as amended from time to time.

2.2 Ordering

Each Party shall place orders for services by submitting a local service request (“LSR”) to the other Party. The Party that receives the order shall bill the ordering Party a service order charge as specified in this Attachment for each LSR submitted. An individual LSR will be identified for billing purposes by its Purchase Order Number (“PON”).

2.2.1 The Party that receives the order will bill the service order charge, as applicable, for an LSR, regardless of whether that LSR is later supplemented, clarified or cancelled.

2.3 Provisioning

2.3.1 Each Party shall provision services during its regular working hours. To the extent a Party requests provisioning of service to be performed outside of regular working hours, or the work so requested requires the provisioning Party’s technicians or project managers to work outside of regular working hours, overtime charges shall apply.

2.3.2 Cancellation Charges. If the ordering Party cancels an LSR any costs incurred by the Party that receives in the order in conjunction with the provisioning of that request will be recovered in accordance with the Pricing Attachment.

2.3.3 Expedited Service Date Charges. For Expedited Service Date Advancement requests by a Party, expedited charges will apply for intervals less than the standard interval. The charges as outlined in the Pricing Attachment will apply as applicable.

2.3.4 Order Change Charges. If the ordering Party modifies an order after being sent a Firm Order Confirmation (FOC) from the other Party, the Order Change Charge will be paid by the ordering Party in accordance with the Pricing Attachment.

2.3.5 Access to Inside Wire. Each Party is responsible for accessing customer premise wiring without disturbing the other Party’s plant. In no case shall one Party remove or disconnect the loop facilities or ground wires from the other Party’s NIDs, enclosures, or protectors. If one Party removes a loop in violation of this Agreement, that Party will hold the other Party harmless for any liability associated with the removal of the loop or ground wire from the NID. Furthermore, neither Party shall remove or disconnect NID modules, protectors, or terminals from the other Party’s NID enclosures.

2.4 Maintenance and Repair

2.4.1 Requests for trouble repair are billed in accordance with the provisions of this Agreement. MVC and Midcontinent agree to adhere to standard industry procedures for maintenance and repair.

- 2.4.2 If one Party reports a trouble and no trouble actually exists on the other Party's portion, the other Party will charge the reporting Party for any dispatching and testing (both inside and outside the Central Office (CO)) required by the other Party to confirm the working status.

2.5 Rates

Unless otherwise specified herein, charges applicable to pre-ordering, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment.

3. Miscellaneous

3.1 Customer Transfer.

- 3.1.1 Service orders will be in a standard format designated by MVC.
- 3.1.2 When notification is received from Midcontinent that a current End User Customer of MVC will subscribe to Midcontinent's service, standard service order intervals for the appropriate class of service will apply.
- 3.1.3 Midcontinent will be the single point of contact with MVC for all subsequent ordering activity resulting in additions or changes to services except that MVC will accept a request directly from the End User for conversion of the End User Customer's service from Midcontinent to MVC.
- 3.1.4 If the Old Service Provider ("OSP") determines that an unauthorized change in local service to the New Service Provider ("NSP") has occurred, the OSP will reestablish service with the appropriate local service provider and will assess the NSP as the carrier initiating the unauthorized change, any charges allowed under the FCC and State rules. Appropriate nonrecurring charges, as set forth in the applicable MVC tariff will also be assessed to the NSP. These charges can be adjusted if the NSP provides satisfactory proof of authorization.
- 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 and compliance with its obligations under the Number Portability Attachment. Subject to MVC's obligations to complete the transfer of customers within a twelve month period after the effective date of this Agreement and to transfer roughly an equal number of customers each week during the transition period, in cases of work schedule conflicts, a Party may attend to its continuing customers in preference to disconnection of a customer to be transferred.

3.2 Misdirected Calls.

- 3.2.1 The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):

- 3.2.2 To the extent the correct provider can be determined; each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.
- 3.2.3 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the End User Customer the correct contact number.
- 3.2.4 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit End User Customers or to market services.

3.3 Letter of Authorization.

- 3.3.1 MVC will not release the Customer Service Record (CSR) containing CPNI to Midcontinent on MVC's End User Customer accounts unless Midcontinent first provides to MVC a written Letter of Authorization (LOA). MVC shall accept a blanket LOA or any other form agreed upon between MVC and Midcontinent authorizing the release of such information to Midcontinent.
- 3.3.2 An LOA will be required before MVC will process an order for services provided in cases in which the End User Customer currently receives Exchange Service from MVC or from a local service provider other than Midcontinent. MVC shall accept a blanket LOA or any other form agreed upon between MVC and Midcontinent.
- 3.3.3 Midcontinent and MVC shall each execute a blanket letter of authorization with respect to End User Customer requests so that prior proof of End User Customer authorization will not be necessary with every request (except in the case of a local service freeze). The Parties shall each be entitled to adopt their own internal processes for verification of customer authorization for requests, provided, however, that such processes shall comply with applicable state and federal law and industry and regulatory guidelines.

3.4 Pending Orders.

Orders placed in the hold or pending status by Midcontinent will be held for a maximum of thirty (30) calendar days from the date the order is placed on hold. After such time, Midcontinent shall be required to submit a new service request. Incorrect or invalid requests returned to Midcontinent for correction or clarification will be held for thirty (30) calendar days. If Midcontinent does not return a corrected request within thirty (30) calendar days, MVC will cancel the request.

- 3.5 Neither MVC nor Midcontinent shall prevent or delay an End User Customer from migrating to another carrier because of unpaid bills, denied service, or contract terms.
- 3.6 The Parties shall return a Firm Order Confirmation (FOC) and Local Service Request (LSR) rejection/clarification in accordance with industry-standard intervals and applicable rules of the FCC.

3.7 Contact Numbers.

The Parties agree to provide one another with contact numbers for the purpose of ordering, provisioning and maintenance of services. Contact numbers for maintenance/repair of services shall be answered in accordance with each Party's standard procedures. Each Party will make a reasonable effort to notify the other Party when a trouble ticket has been closed. After making a reasonable effort to contact the Party reporting trouble to request additional information or to request authorization for additional work deemed necessary, if the other Party is unsuccessful in obtaining information or authorization, the other Party will place trouble tickets in delayed maintenance status.

Local Number Portability (LNP) Attachment

Local Number Portability

1. General

- 1.1 The Parties will offer service provider local number portability (LNP) in accordance with FCC rules and regulations. Service provider portability is the ability of users of Telecommunications Services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Under this arrangement, the new Telecommunications Carrier must directly provide Telephone Exchange Service to the End User Customer porting the telephone number. For a port request to be valid, the End User Customer must retain his or her original number; be located either at the same location or at a location within the same Rate Center Area before and after the port; and be served directly by the Telecommunications Carrier requesting the port with a Telecommunications Service.
- 1.2 The Parties agree that the industry has established Local Routing Number (LRN) technology as the method by which LNP will be provided in accordance with such rules, regulations and guidelines. As such, the Parties agree to provide to each other number portability via LRN.
- 1.3 This Agreement does not govern geographic portability where the End User Customer moves outside the rate center. Geographic portability is not allowed under this Agreement.
- 1.4 The Parties agree to comply with finalized FCC rules and orders, North American Numbering Council (NANC) procedures and guidelines concerning numbering and other industry guidelines related to network architecture, including but not limited to, North American Numbering Council Local Number Portability Architecture and Administrative Plan report, which was adopted by the FCC, Second Report and Order, CC Docket 95-116, released August 18, 1997, and the Central Office Code Assignment Guidelines; the rules and procedures adopted in Local Number Portability Porting Interval and Validation Requirements, Report and Order and Further Notice of Proposed Rulemaking, FCC 09-41, released May 13, 2009; and the rules and procedures adopted in Local Number Portability Porting Interval and Validation Requirements, Report and Order, FCC 10-85, released May 20, 2010.
- 1.5 Service Management System (SMS) Administration.

The Parties will work cooperatively with other local service providers to establish and maintain contracts with the Number Portability Administration Center (NPAC) Service Management System (SMS).

1.6 Signaling.

In connection with LNP, each Party agrees to use SS7 signaling in accordance with applicable FCC rules and orders.

1.7 N-1 Query.

Neither Party offers default query service so non-queried calls will be returned to the N-1 carrier.

1.8 Porting of Reserved Numbers.

End User Customers of each Party may port reserved numbers, as defined in 47 C.F.R. Section 52.15(f)(1)(vi), that the End User Customer has paid to reserve, only if there is at least one working telephone number in the group. Portable reserved numbers are identified on the Customer Service Record (CSR).

1.9 Splitting of Number Groups.

The Parties shall permit blocks of subscriber numbers (including, but not limited to, Direct Inward Dial (DID) numbers and MultiServ groups) to be split in connection with an LNP request. MVC and Midcontinent shall permit End User Customers who port a portion of the DID numbers assigned to such customers to retain DID service on the remaining numbers. If a Party requests porting of a range of DID numbers smaller than a whole block, that Party shall pay the applicable labor charges as listed in the Pricing Attachment to this Agreement for reconfiguring the existing DID numbers. In the event no rate is set forth in this Attachment, then the Parties shall negotiate a rate for such services.

1.10 The Parties will set LRN unconditional or 10-digit triggers where applicable. Where triggers are set, the porting Party will remove the ported number at the same time the trigger is removed.

1.11 A trigger order is a service order issued in advance of the porting of a number. A trigger order 1) initiates call queries to the AIN SS7 network in advance of the number being ported; and 2) provides for the New Service Provider to be in control of when a number ports.

2. Coordinated Cutovers.

2.1 For LNP Coordinated Hot Cuts (“CHC”), the New Service Provider (NSP) may request a desired due date and time. These will be considered coordinated orders. NSP must indicate a request for CHC on the LNP request form to request a coordinated order. The Old Service Provider (OSP) will not apply a 10-digit trigger upon porting telephone numbers to NSP network. Labor charges for CHCs are listed in Pricing Attachment to this Agreement. OSP offers two types of coordination:

2.1.1 Any Time:

Order to be worked any time during the day on the due date but OSP must notify NSP when completed.

2.1.2 Specific Time:

Order is to be worked at a specific time on the due date.

- 2.2 If coordination is requested, NSP will be required to call the OSP forty-eight (48) hours prior to the requested coordination date and time. This call is to confirm or reschedule the date and time. OSP reserves the right to change the date and time if other demands require such a change, subject to Section 3.1.2 below. Every reasonable attempt will be made to commit to the requested date and time. Prior to the forty-eight (48) hour Coordination Call, OSP will confirm with the various work groups involved with the coordination, as to their ability to complete the work on the desired date and time. If no call is received from the NSP, it will be assumed that the NSP is not ready and the order will not be completed on the requested due date and time. If NSP does not contact OSP within forty-eight (48) hours from the original due date to reschedule, the order will be canceled.

3. **Late Notification Changes - Due Date, Coordination.**

- 3.1 OSP will proceed with the conversion based on the agreement at the forty-eight (48) hour call. Policy for late notification of changes in due date and/or coordination time is as follows:

- 3.1.1 If OSP personnel have to wait more than fifteen (15) minutes for NSP to join the scheduled call for the CHC, then NSP shall be responsible to reimburse OSP for all personnel costs incurred. The charge will be calculated, in half-hour increments, times the loaded hourly compensation rate for each person involved in the call.
- 3.1.2 If NSP contacts OSP to reschedule the CHC call less than forty-eight (48) hours prior to the scheduled CHC call time, NSP will be responsible to reimburse OSP for all costs incurred to date on the CHC order.
- 3.1.3 Once the scheduled call is underway, and personnel from both NSP and OSP are present on the call, should NSP incur a problem that would delay the conversion, OSP will provide NSP reasonable time (20 minutes or less) to cure the problem. However, any delay longer than 20 minutes will result in OSP charging NSP for personnel costs incurred. The charge will be calculated based on the delay time, in half-hour increments, times the loaded hourly compensation rate for each person involved in the call.

4. **Obligations of Both Parties.**

- 4.1 Midcontinent is responsible for advising the NPAC of telephone numbers that it ports in and the associated data as identified in industry forums as being required for number portability.
- 4.2 When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original End User Customer; the ported telephone number will be released back to the carrier that is the code holder or block holder.
- 4.3 Each Party has the right to block default routed calls entering a network in order to protect the public switched telephone network from overload, congestion, or failure propagation.
- 4.4 Both Parties are currently certified by the Regional NPAC.
- 4.5 Each Party will designate a Single Point of Contact (SPOC) to schedule and perform required testing. These tests will be performed during a mutually agreed upon time frame and must meet the criteria set forth by the Inter-Industry LNP Regional Team for porting.
- 4.6 Each Party shall abide by NANC and the Inter-Industry LNP Regional Team provisioning and implementation processes, including without limitation the SOA concurrence process
- 4.7 Each Party shall become responsible for the End User Customer's other telecommunications related items, e.g. E911, Directory Listings, Operator Services, Line Information Database (LIDB), when it ports the end-user's telephone number to its switch.
- 4.8 The LRN associated with the ported number associated with MVC's Local/EAS area shall be derived from an NPA- NXX within the same Local/EAS areas.

Ancillary Services Attachment

1. 911/E-911 Arrangements

- 1.1 MVC utilizes [the Williston Police Department] for the provision of 911/E-911 services. Midcontinent is responsible for connecting to [the Williston Police Department] and populating [the Williston Police Department]'s database. All relations between [the Williston Police Department] and Midcontinent are totally separate from this Agreement and MVC makes no representations on behalf of [the Williston Police Department].
- 1.2 Neither Party will be liable for errors with respect to the other Party's provision of 911/E-911 services to the other Party's End-User Customers.

2. Directory Listings and Directory Distribution

- 2.1 Midcontinent will be required to negotiate a separate agreement for directory listings and directory distribution, except as set forth in Sections 2.2 and 2.3 below, with MVC's vendor for directory publications.
- 2.2 Listings

Midcontinent agrees to supply MVC on a regularly scheduled basis, and in a format prescribed by MVC, all listing information for Midcontinent's subscribers who wish to be listed in any MVC published directory or MVC's Directory Assistance Database for the relevant operating area. It is the responsibility of Midcontinent to submit such listing information in the prescribed manner to MVC prior to the directory listing publication cut-off date. Listing information will consist of names, addresses (including city, state and zip code) and telephone numbers. Nothing in this Agreement shall require MVC to publish a directory where it would not otherwise do so. Listing inclusion in a given directory will be in accordance with MVC's solely determined directory configuration, scope, and schedules and listings will be treated in the same manner as MVC's listings.

- 2.3 Distribution

Upon directory publication, MVC will arrange for the initial distribution of the directory to service subscribers in the directory coverage area. Midcontinent will supply MVC, in a timely manner, with all required subscriber mailing information including non-listed and non-published subscriber mailing information, to enable MVC to perform its directory distribution to Midcontinent customers. Midcontinent, at the discretion of MVC, will pay MVC for the reasonable and direct cost for directory mailings to Midcontinent subscribers but will not charge for the cost of the actual directory when delivered with the annual distribution.

2.4 Purchase of Directories

Midcontinent at its discretion may purchase a stock of directories for the Midcontinent to distribute directly to the Midcontinent end users. MVC will charge a reasonable price for such directories.

Pricing Attachment

Pricing Attachment

General.

The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement. MVC shall provide updated versions of the Tariff prior to the effective date of such change.

A. Service Order Charges

1. Service Order Charge (LSR)		
Facility Administration Charge		\$ 22.50
Primary Charge		\$ 18.00/request
Subsequent Charge		\$ 12.00/request
2. Service Order Cancellation Charge		\$ 12.00/request
3. Expedited Due Date in addition to SOC		\$ 32.00/request
4. Order Change Charge		\$ 12.00/request

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 1

EAS INTERCONNECTION NETWORK ARRANGEMENTS TABLE

LOCAL CALLING SCOPE AND NPA/NXXS

<u>Exchanges in Local Calling Area</u>	<u>Midcontinent NPA/NXX</u>	<u>Missouri Valley NPA/NXX</u>
Williston	N/A	701-572, 577, 774

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 20th day of April, 2012, she mailed copies of the foregoing 1) *Post-Hearing Brief of Midcontinent Communications*, 2) *Recommended Decision*, and 3) proposed *Interconnection Agreement* by placing a true and correct copy thereof of each 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

Subscribed and sworn to before me this 20 day of April, 2012.



Notary Public

