

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF

Midcontinent Communications,)
a South Dakota Partnership)
)
Complainant,)
)
vs.)
)
Missouri Valley Communications, Inc.,)
)
Respondent.)

Case No. PU-11-697

RECEIVED

JUN 13 2012

PUBLIC SERVICE COMMISSION

PUBLIC COMMENTS OF MISSOURI VALLEY COMMUNICATIONS

To the Commission:

Missouri Valley Communications ("MVC") hereby submits its public comments in the above-referenced matter. MVC has identified a number of concerns with respect to the arbitrator's recommended decision and the proposed interconnection agreement. In particular, these concerns surround the potential legal precedent that may be established by this case and our ability to continue to serve all customers across the entire 393 square-mile exchange area if the arbitrator's recommended decision and proposed interconnection agreement are approved by the North Dakota Public Service Commission ("ND PSC" or "Commission").

MVC understands from the most recent work session on this matter that the Commissioners and Commission staff may be experiencing some degree of weariness with respect to the arguments that continue to be made in this docket. MVC sympathizes with this weariness insofar as MVC is also weary of making the same arguments without, apparently, thus far persuading the Commission as to the legal flaws in Midcontinent Communications' ("MidCo's") request for interconnection and MidCo's arguments in support thereof. To the extent possible, MVC will try to take a fresh perspective on these issues and explain to the Commission the basis for MVC's concerns.

I. Approval of the Arbitrator's Recommended Decision and Proposed Interconnection Agreement is contrary to this Commission's own regulatory precedent and inconsistent with the principles of universal service.

As an initial matter, MVC believes that the Commission should view MidCo's recent request for interconnection from the broader perspective that MidCo has sought local interconnection with MVC before, and that prior request was rejected by this Commission. MidCo cites a different section of the Telecommunications Act of 1996 ("Act")¹ and a recent Declaratory Ruling of the FCC² in support of this recent request for interconnection. However, the underlying

¹ 47 U.S.C. §101 et seq.

² FCC Order No. FCC 11-83, Adopted May 25, 2011 and Released May 26, 2011

reasons why the Commission rejected MidCo's prior interconnection request have not changed and nothing in the revised legal citations by MidCo should result in a decision here that is different from the Commission's decision in the prior docket. In short, MidCo has simply repackaged old arguments into this new request for interconnection, and the reasons that led to the rejection of the previous request are the same reasons that this request should be rejected.

The previous request for interconnection by MidCo occurred when the Commission considered a section 251(c) request by MidCo for local interconnection dated November 14, 2007 and rejected that request on October 8, 2008.

With due respect to the Commission, there have been no changes of fact or law in the last four years. Therefore, the Commission should reject this most recent request for interconnection, consistent with the Commission's decision in the previous docket four years ago.

For example, MidCo's testimony during the arbitration states that MidCo intends to serve only the seven (7) square miles within the city limits of Williston. But the Williston EXCHANGE consists of 393 square miles. The 386 square miles outside the Williston city limits contains more than 2,000 rural telephone lines.

During the arbitration, when asked whether MidCo would be willing to serve these rural customers, MidCo responded that it would not. When asked who would serve those customers if MVC were to exit the market, MidCo responded: "I don't know."

MVC is hard-pressed to see how MidCo's request for local interconnection could be any MORE inconsistent with the principles of universal service. As this inconsistency was one of the primary reasons this Commission rejected MidCo's last request for interconnection, approval in this docket would run counter to the Commission's own precedent in this area of telecommunications regulation.

Adoption of the Arbitrator's recommendations in the Recommended Decision and approval of the resulting proposed interconnection agreement is highly likely to raise rates significantly for the outlying customers outside the Williston city limits. This is because the outlying customers are much more costly to serve, and MVC would not be able to average the rates of these high-cost outlying customers with the rates of the lower-cost customers that MVC would lose to MidCo within the Williston city limits.

Raising rates for rural customers is contrary to the principles of universal service under section 254(b) of the Act, among which are "reasonable and affordable rates for all consumers" as well as "rates in rural areas that are reasonably comparable to rates charged for similar services in urban areas."

The only customers in the Williston market who will have the opportunity to benefit from local wireline competition will be those who live in the Williston city limits. Those customers beyond the city limits will not benefit because MidCo is on record that it will not serve them. Again, while approval by this Commission may, to some degree, promote competition within the tiny portion of the Williston exchange within the Williston city limits, those who live outside the city limits will not benefit but rather will likely suffer higher rates. Neither the Act nor the Declaratory Ruling contemplates the promotion of competition at the expense of the principles of universal service.

II. No legal development has changed the long-standing fact that MVC is exempt from the type of interconnection sought by MidCo.

In the previous section of these comments, MVC referred to the last time this Commission considered a request by MidCo for interconnection with MVC. In its order rejecting MidCo's request, this Commission made a number of findings of fact and conclusions of law. But the order itself contained a single holding: MVC was found to be exempt from the type of interconnection sought by MidCo.³

MVC's primary concern with respect to MidCo's current request for interconnection is that the Commission may have missed the fact that MidCo cites a different subsection of the Act as the basis for its current request for interconnection.⁴ The actual local interconnection MidCo seeks is the same as the interconnection MidCo sought in the last interconnection docket before this Commission – a docket in which this Commission rejected MidCo's request.

In short, MidCo appears to be on the verge of a different result in this docket, even though the difference between MidCo's last request and its current request is essentially a matter of semantics. There is no real-world difference between the interconnection that was rejected by this Commission in the last docket and the interconnection that appears close to approval in this docket.

The small difference between MidCo's last unsuccessful attempt to interconnect and this most recent attempt appears to be based on a Declaratory Ruling by the FCC issued in 2011. MidCo apparently believes that by couching its most recent request for interconnection under sections 251(a) and (b) of the Act, MidCo can accomplish the interconnection it was previously unable to obtain by seeking interconnection under section 251(c).

³ §251(f) exempts rural telephone companies from the obligation to interconnect with others for the purposes of exchanging **local** telecommunications traffic as set forth in §251(c) of the Act. The rural exemption was not eliminated by the Declaratory Ruling. To the contrary, the Declaratory Ruling *affirms* the continued existence of the rural exemption:

...our approach allows the rural incumbent LEC to retain its exemption from the more rigorous section 251(c)(2) interconnection,... while still providing it the procedural protections of having state commissions arbitrate section 251(a) and (b) interconnection and service requests. We find that this reading of the statute better preserves the protections that Congress intended for rural LECs.

MVC is frankly at a loss as to how the foregoing language could be any clearer. Under the Declaratory Ruling, MVC is subject only to the requirements of §251(a) and (b). The Ruling "allows the rural incumbent LEC to retain its exemption from the more rigorous section 251(c)(2) interconnection." In short, section 251(c)(2), from which MVC is exempt under a previous ruling by this Commission, is the **only** part of section 251 that discusses interconnection for the purpose of "transmission and routing of telephone exchange services and exchange access." The ND PSC needs to look at all three levels of interconnection required of incumbent local exchange carriers, understand the differences between them, and most importantly understand that as a rural telephone company, MVC is exempted from the level of interconnection that is most burdensome and intensive, which is also, in reality, the level of interconnection MidCo is currently requesting.

⁴ Sections 251(a) and (b) of the Act as opposed to Section 251(c) of the Act, which was cited as the basis for interconnection in the last interconnection case between these same parties and that was rejected by this Commission.

The most frustrating aspect of this approach to MVC (and the reason, no doubt, why the Commission perceives that it is simply hearing the same arguments over and over again) is that the FCC's Declaratory Ruling changed *nothing* about the Telecommunications Act that prohibits the kind of interconnection MidCo has long sought and continues to seek. In fact, in the first paragraph of its ruling, the FCC states quite clearly that the only purpose of its Declaratory Ruling is merely "...to clarify statutory rights under section 251..." of the Act.

The legal problem for MidCo is that for all that the Declaratory Ruling purports to clarify the interconnection requirements of the Act, the FCC is not empowered or authorized to change the actual language of the Act any more than the ND PSC is empowered or authorized to change the actual language of state statutes. Both bodies are authorized to *interpret* statutes – but neither has the authority to change their language.

While MidCo purports in its written request for interconnection⁵ that it is seeking interconnection under sections 251(a) and (b), MidCo is in fact simply reiterating its request from five years ago for interconnection under section 251(c). This is because the interconnection arrangements MidCo seeks under sections 251(a) and (b) cannot be provided in the absence of 251(c) interconnection. Specifically, MidCo's written request for interconnection in this case reads as follows:

The interconnection will be for the purpose of exchanging local telecommunications traffic. The local traffic would be exchanged under the terms of section 251(b)(5), which governs reciprocal compensation for local traffic.⁶

There are two *enormous* problems with the above-cited language – one in each of the two sentences.

A. Sentence One

While MidCo purports to rely on sections 251(a) and (b), to which MVC is admittedly subject, the first sentence of the above-cited language appears only in section 251(c)(2)(a). The Commission's understanding of this issue is of critical importance to this case. MidCo alleges that it is seeking interconnection under sections 251(a) and (b)...but MidCo's written request for interconnection includes an element that is found only under section 251(c).

But this Commission has already rejected MidCo's attempts to interconnect with MVC under the provisions of section 251(c). The Commission did so by holding that MVC was EXEMPT from the provisions of section 251(c). Nothing has changed between then and now. Nothing in the Declaratory Ruling overturns MVC's exemption from providing any of the interconnection requirements of section 251(c). To the contrary, the Ruling expressly reconfirms the existence and continued viability of the rural exemption.

In reality, MidCo has simply wrapped a section 251(c) request in new wrapping paper that cites sections 251(a) and (b) interconnection but in fact requests section 251(c) interconnection. Such a request was rejected by this Commission four years ago and should be rejected by this Commission again today. As the Commission found four years ago, under section 251(f) MVC is exempt from the provisions of section 251(c) and the Commission's analysis of MidCo's current interconnection request needs to go no further.

⁵MidCo Letter to GM of MVC dated June 14, 2011

⁶ Id.

B. Sentence Two

Again, MidCo alleges that its current request for interconnection is based on sections 251(a) and (b) of the Act. But the second sentence of the above-cited language from MidCo's written request for interconnection is a misstatement of section 251(b). In fact, section 251(b)(5) states as follows:

Reciprocal Compensation. – the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Nowhere in section 251(a) or (b) is there any reference to "telephone exchange service and exchange access" (i.e., local traffic) as discussed in MidCo's second sentence, above. The only place in the Act where "telephone exchange service and exchange access" (i.e., local traffic) is addressed is, again, under the more rigorous provisions of section 251(c), from which MVC, as a rural telephone company under section 251(f), is exempt. In other words, the same analysis applies to the second sentence as applies to the first.

MidCo may claim that it is relying on sections 251(a) and (b) of the Act and is therefore entitled to local interconnection under the provisions of the FCC's Declaratory Ruling.⁷ But in actuality, as evidenced by MidCo's written request for local interconnection, MidCo's current request is just another section 251(c) request.

The last time MidCo attempted local interconnection with MVC under section 251(c), this Commission rejected that request. MidCo is simply trying to avoid being rejected again by citing sections 251(a) and (b) when the very language of their written request for interconnection indicates that in reality MidCo is once again seeking local interconnection under section 251(c).

Also in MidCo's written request for interconnection in this case is the following language:

MidContinent proposed that the parties interconnect at Williston using two-way direct interconnection between Missouri Valley's Williston's end office switch (WLSTNDBCHDSO) and the MidContinent headend, with a point of interconnection at a mutually –agreed meet point between the two locations. [emphasis added]

Again, in the Act, the only reference to a meet "point" is set forth in section 251(c)(2)(b) which states: "at any technically feasible point within the carrier's network" [emphasis added]. Once again, while MidCo purports to seek local interconnection under sections 251(a) and (b), a close reading of its actual, written request for interconnection reveals that MidCo has simply filed yet another section 251(c) request. While MVC hates to repeat itself, MVC is EXEMPT from the provisions of section 251(c), as this Commission held in the previous interconnection docket between these same parties.

⁷ The FCC's Declaratory Ruling reaffirms the Act's requirement that local exchange carriers like MVC are required to meet the less onerous interconnection obligations set forth in sections 251(a) and (b), but the Ruling ALSO reaffirms that incumbent local exchange carriers like MVC are NOT required to meet the more onerous interconnection obligations set forth in section 251(c) when such incumbent local exchange carriers are rural telephone companies that are exempt under the provisions of section 251(f) from such onerous interconnection obligations. SEE FCC Order No. FCC 11-83, paragraph 14, page 9

For all practical purposes, NO DIFFERENCE exists between MidCo's request for local interconnection five years ago (rejected by this Commission), and its current request for local interconnection. While MidCo has changed the language in order to disguise a request for section 251(c) interconnection as a request for section 251(a) and (b) interconnection, the underlying reasons why this Commission rejected MidCo's request for interconnection four years ago – undue economic impact and inconsistency with the principles of universal service – have not changed.

MVC therefore respectfully submits that in the interests of judicial consistency, the Commission should reject this request for local interconnection for exactly the same reasons it rejected MidCo's last request – because in the final analysis there is no difference between the two requests. MidCo may cite sections 251(a) and (b), but MidCo's written request for interconnection reveals that it is in fact seeking interconnection under section 251(c), from which MVC is exempt.

III. MVC already provides §251(a) and (b) interconnection to MidCo.

As noted above, MidCo states that it is seeking interconnection pursuant to sections 251(a) and (b) of the Act. Section 251(a) of the Act provides, in pertinent part, as follows:

- (a) General duty of telecommunications carriers
Each telecommunications carrier has the duty -
 - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers... [emphasis added]

MVC has long provided indirect interconnection to MidCo so that MidCo can resell MVC's local service and provide long distance service in Williston. MidCo is already capable of offering the "triple play" using the provisions of sections 251(a) and (b). MVC's rural exemption relieves it from having to provide any level of interconnection beyond that which it already provides under the Act and Declaratory Ruling.

IV. The proposed interconnection agreement should be rejected because it is inconsistent with the provisions of section 251 of the Act.

Under the Act, once presented with an interconnection agreement resulting from arbitration, the ND PSC has two options: it may approve the interconnection agreement or it may deny the interconnection agreement. Here are the provisions for approval or rejection as set forth in the Act in section 252:

- (e) APPROVAL BY STATE COMMISSION-
 - (1) APPROVAL REQUIRED- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
 - (2) GROUNDS FOR REJECTION- The State commission may only reject--
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--
 - (i) the agreement (or portion thereof) discriminates

against a telecommunications carrier not a party to the agreement; or
(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.⁸ [emphasis added]

Please note that the FCC's Declaratory Ruling also addresses the foregoing language in section 252 of the Act as follows:

...section 252(e) directs the state commission to review “[a]ny interconnection agreement adopted by negotiation or arbitration,” and grants the state commission authority to reject any interconnection agreement “if it finds that the agreement does not meet the requirements of section 251.” We emphasize that none of these provisions refer to a specific subclause in section 251, but rather to section 251 in general. Moreover, where Congress intended to refer only to a specific subsection of section 251, it did so expressly...We therefore conclude that Congress intended section 252 to apply to requests to incumbent LECs for interconnection, services, or network elements made pursuant to sections 251(a) and (b), as well as pursuant to section 251(c).⁹

As already demonstrated above, this application for interconnection by MidCo under sections 251(a) and (b) of the Act is essentially the same request previously rejected by this Commission in part because the application did not meet the standards underlined in the above citation. The only difference between that previous docket and this one is that in the prior docket, MidCo actually cited section 251(c) as the basis for the interconnection. The fundamental problem with MidCo's current request for interconnection is that MidCo wants the same interconnection elements from MVC now as it did in the previous docket. MidCo simply (and disingenuously) now cites sections 251(a) and (b) rather than section 251(c) for the procurement of these same interconnection elements, because MidCo erroneously believes that the FCC's Declaratory Ruling somehow now imposes section 251(c) obligations on rural telephone companies via sections 251(a) and (b).

As set forth in the first section of these comments, the FCC has not “merged” section 251(c) with sections 251(a) and (b) in its declaratory ruling. Nor has the North Dakota PSC lifted MVC's rural exemption.¹⁰ To the contrary, again as noted above, the Declaratory Ruling restates that rural telephone companies are subject only to sections 251(a) and (b) and reaffirms the rural telephone company exemption from the provisions of section 251(c). Therefore, this Commission should once again reject the proposed interconnection agreement because it is inconsistent with the underlined portion of the language from section 252(e) cited above.

⁸ §252 of the Act

⁹ FCC Declaratory Ruling No. FCC 11-83, page 11

¹⁰ ND PSC Findings of Fact, Conclusions of Law, and Order in Cause Nos. PU-08-61 and PU-08-176, page 10

Further, the Commission should reject this interconnection agreement because approval would establish legal precedent that would allow MidCo or other competitors to force §251(c) interconnection obligations on other exempt rural telephone companies across North Dakota.

MVC submits that Congress included section 251(c) in the Act for a reason. Otherwise sections 251(a) and (b) would be sufficient by themselves to accomplish any interconnection a competitor might need. So as the heading to section 251(c) in the Act suggests, section 251(c) contains additional interconnection obligations for incumbent local exchange carriers on top of the interconnection obligations contained in section 251(b).

MVC further submits that Congress included section 251(f) in the Act for a reason. That reason was to exempt rural telephone companies from the additional, more onerous interconnection obligations of section 251(c). The provisions of MidCo's letter to MVC, requesting that MVC provide interconnection, contain requests for interconnection elements that would require meeting certain section 251(c) interconnection obligations. MVC cannot be required to meet those obligations because – as this Commission specifically found in its order in the previous docket between these parties -MVC is exempt from them.

V. MidCo's intent in its request for interconnection is at base one of "cherry picking," a practice that has been contrary to the policies of the ND PSC for many years now.

MidCo has admitted on the record of the arbitration that it has no intention of providing service to the majority of the geography within the Williston exchange. MidCo intends to compete only for customers located in the 7 square miles within the city limits of Williston. MidCo admitted that it will not serve the remaining 386 square miles of the exchange, even if MVC were to exit the entire Williston exchange market.

Those customers are the most difficult and expensive to serve, but MidCo fully expects that MVC will continue to serve them even if MidCo takes MVC's less costly (and therefore more lucrative) customers within the city limits. If MVC determines that MVC is unable to do so because the loss of customers within the Williston city limits prevents MVC from making a viable business case for serving only the outlying customers, MidCo is content to see such customers left without any landline service whatsoever. MVC is far from the only rural telephone company in ND that has such service areas, and MVC would hate to see MidCo and other competitors engage in such "cherry picking" across the state because it harms universal service [which is among the reasons why rural telephone companies are exempt under section 251(f) from the interconnection provisions of section 251(c)]. In fact, the Act specifically reserves to the state the preservation of universal service under section 253(b) of the Act.

VI. MVC's uniqueness among rural telcos insofar as it does not receive high-cost universal service funding deepens the negative financial impact on MVC and its customers from MidCo's interconnection request.

MVC does not receive full high-cost USF support like most if not all other rural telephone companies in North Dakota. Therefore the negative financial impacts on MVC from the potential loss of customers to MidCo that would result from a requirement to exchange local traffic are deepened.

The more customers MidCo takes from within the Williston city limits, the more MVC would be left with just the outlying high-cost customers. If MVC received full USF, this effect might at least be partially mitigated. Instead, MVC is left with the options of either raising rates to those customers or exiting the exchange altogether.

While pursuing one of these options would likely be unavoidable by MVC, that result would be inconsistent with this Commission's long-standing policy of supporting universal service. Raised rates for outlying customers would also run directly contrary to one of the central principles of universal service as set forth in section 254(b)(1) which states that "Quality services should be available at just, reasonable, and affordable rates." Further, such rates would be contrary to another of the central principles of universal service set forth in section 254(b)(3):

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Moreover, the result of MidCo taking those of MVC's customers that are least costly to serve (those within the Williston city limits) would be to impose an unreasonable economic burden on MVC to the extent MVC would be left primarily with those customers that are most expensive to serve and will lead to adverse impacts on those outlying customers when rates will likely have to be raised or customers abandoned as a result of MVC's increased costs of serving high-cost customers without the counterbalancing financial benefits of serving lower-cost customers within the Williston city limits.

VII. ILEC Duty to Provide Service.

MVC is the carrier of last resort in the Williston exchange area. MVC has a responsibility to serve the entire 393 square mile exchange area upon receiving reasonable requests for such service. The proposed interconnection agreement, if approved, would allow MidCo to "cream skim" the high density-low cost area within the city limits of Williston.

If MVC is left with only the outlying high-cost customers, the Williston exchange will be increasingly unattractive to serve, and MVC might well determine that it is unable to serve the Williston exchange at all. MidCo admitted that it would not serve the outlying customers in any scenario. Such customers could therefore be left with no landline service provider at all if MVC abandons the exchange. The Commission cannot be placed in the position of not knowing whether any provider would serve these customers.

VIII. MVC is cooperative-owned and therefore operates in a manner consistent with the North Dakota telephone cooperatives' long-standing commitment to universal service. That commitment is directly threatened by this interconnection agreement.

MVC is 100% owned by a telephone cooperative and a member in good standing of the North Dakota Association of Telephone Cooperatives. As such, it shares the common goals of NDATC of providing affordable, high-quality telecommunications services to subscribers in the ENTIRE exchange, in a manner consistent with the principles of universal service.

By contrast, MidCo is a substantially-sized private company that has admitted on the record that it is only interested in the seven (7) square mile area within the city limits of the 393 square-mile Williston exchange. In fact, MidCo admitted that even if MVC were forced to abandon its Carrier of Last Resort (COLR) obligations, MidCo would STILL not provide service to the remaining 386 square miles in the Williston exchange. This outlying area contains more than 2,000 customer telephone lines that face increased rates or even abandonment as a result of the proposed interconnection agreement.

IX. The stated purpose of the FCC's recent Declaratory Ruling was to promote competition. Competition is alive and extremely well in Williston today, without the improper interconnection agreement sought by MidCo.

Among the intentions of the FCC's Declaratory Ruling referred to above was the promotion of telecommunications competition in a manner consistent with the Act, without eliminating the protections afforded by the Act to rural telephone companies in order to preserve universal service. The plain truth of the matter is that competition is not only alive but quite healthy in the Williston exchange today.

From a voice perspective, MidCo is already competing with MVC via resale. In addition, due to wireless substitution, voice services are also being provided by Verizon and AT&T Wireless. This strong competition for voice services by wireless media can be seen in the actual decline in landline access lines in the Williston exchange between 2003 and 2012 – the same period during which the recent oil and gas boom has brought a significant increase in Williston's population. Clearly, new arrivals to Williston are bringing their wireless telephones and are not subscribing in significant numbers to landline voice service. From a video programming perspective, MidCo is battling with DirecTV and DISH Network. From a broadband perspective, competition is coming from 4G wireless providers Verizon and AT&T Wireless, landline broadband services are coming from NCI and MidCo, satellite broadband services are coming from Wild Blue, and terrestrial wireless broadband service is coming from Bakken Wireless.

One of the more troubling aspects of this competition, however, is that if this local interconnection agreement is approved, MidCo would be the only facilities-based provider capable of providing the so-called "triple play" of voice telephony, data services and video programming – but making these services available only within the 7 square-mile city limits of the 393 square-mile exchange. Those living outside the city limits (but within the Williston exchange) would be unable to obtain these "triple play" services. Again, this is precisely the kind of "cherry picking" that this Commission has long rejected as a matter of public policy because of its adverse impacts on high-cost customers and inconsistency with the policies of universal service.

X. MidCo's improper request for interconnection merely intensifies the pressures on MVC that already exist for all rural telephone companies as a result of certain reforms announced by the FCC.

The Commission is aware of sweeping reforms in universal service funding and inter-carrier compensation recently announced by the Federal Communications Commission. These changes will be implemented over time and will have a serious impact on the economics of telecommunications service and costs to consumers in North Dakota's rural service areas. All the rural telephone companies in North Dakota will continue to face challenges in providing modern telecommunications services under the new rules, rules that are plainly not designed to assure modern telecommunications service will be available in high cost to serve areas.

Forcing MVC to accept an improper and unjustified local interconnection agreement will simply add to these burdens and, by establishing legal precedent, possibly add to the burdens of North Dakota's remaining rural telephone companies as well.

XI. Quality of Service.

Finally, in spite of the recent oil boom activity, MVC has not received a single complaint from the ND PSC that it is not providing an acceptable quality of landline service in Williston that would perhaps be a more persuasive reason to encourage voice competition beyond the level that already exists.

MVC is engaged in providing landline service to more than 40 new commercial and residential developments. MVC is doing so despite the high risk that those moving into such developments may not even use MVC's services, utilizing instead one or more of the many other competitors in the area. This number of developments is unprecedented in the history of MVC. MVC is meeting that demand with the commitment and determination that has always been the hallmark of rural telephone companies across North Dakota. MVC's ability to continue to do so will be threatened in the event the Commission approves MidCo's request for local interconnection.

In conclusion, MVC wishes to note that the importance of this docket to MVC and its customers cannot be understated. This matter is not simply a small opportunity to promote competition in the Williston area. Rather, it has the very serious potential to cause immediate and irreparable harm to MVC and its consumers. While the possibility of a small benefit to consumers within the city limits of Williston exists, that potential benefit is outweighed by the likely harm to consumers outside the city limits and to the provider that ensures such consumers have access to landline telecommunications services. Moreover, the manner in which MidCo is attempting to obtain interconnection with MVC is a thinly-veiled repeat of the application for interconnection already denied by this Commission four years ago for very good reasons. No significant changes to the facts or to the law have changed in the intervening years and therefore the result should be the same. MidCo's request for local interconnection with MVC should be denied and MVC's rural exemption upheld.

Additionally, as the Commission noted during its last work session, the losing party in this case is likely to appeal. But a very real difference exists with respect to customer experience as the appeal progresses. If the Commission approves the proposed interconnection agreement, customers will begin migrating to MidCo's network, beginning 60 days after the Commission's decision and migration must be completed within one year.

If MVC appeals the approval of the proposed interconnection agreement the migration may well be completed by the time a decision is rendered by the appellate court. If the appellate court overturns the approval of the proposed interconnection agreement by the Commission, then all those customers will have to be migrated back to MVC.

However, if the Commission does not approve the proposed interconnection agreement, no customers would be required to migrate to the MidCo network during MidCo's appeal of that decision by the Commission. If MVC wins the appeal, there will still be no impact to the customers. If MidCo wins the appeal, then migration can begin at that time.

THEREFORE, MVC urges the Commission to reject the Arbitrator's Recommended Decision and the separate and distinct proposed interconnection agreement in this case as inconsistent with the law and with the fundamental principles of universal service. Alternatively, if the Commission approves the proposed interconnection agreement, MVC respectfully requests that the Commission delay implementation of the agreement until judicial review has been completed in order to minimize the negative impact on the Williston customers.

RESPECTFULLY SUBMITTED THIS 12th day of June, 2012.

Signature: Mike Olyne
Title: Gm / CEO