



ATTORNEYS AT LAW

314 EAST THAYER AVENUE • P.O. BOX 400 • BISMARCK, ND 58502
TELEPHONE (701) 223-2890 • FAX (701) 223-7865 • www.pearce-durick.com

ZACHARY E. PELHAM
zep@pearce-durick.com

June 13, 2012

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PUBLIC SERVICE COMMISSION

Hand Delivered

Darrell Nitschke
Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard, Twelfth Floor
Bismarck, ND 58505

Re: Midcontinent Communications v. Missouri Valley Communications, Inc.
PU-11-697

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of *Comments of Midcontinent Communications* along with an *Affidavit of Mailing*.

These documents are also being transmitted electronically to your office. Also enclosed is the first page to be file stamped and returned in the self-addressed, stamped envelope.

Thank you.

Sincerely,

PEARCE & DURICK

Zachary E. Pelham
Counsel to Midcontinent Communications

ZEP/ak
Enclosures
cc: David J. Hogue

**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.)	

COMMENTS OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications (“Midcontinent”), by its attorneys, hereby submits its comments on the interconnection agreement filed by Midcontinent and Missouri Valley Communications, Inc. (“Missouri Valley”) in the above-referenced proceeding and in accordance with the requirements of the Commission’s rules.¹ For the reasons described below, the Commission should approve the agreement as filed.²

I. Introduction

While the interconnection agreement submitted to the Commission does not reflect Midcontinent’s proposals in every respect, Midcontinent has concluded that it reflects a reasonable, lawful result of careful analysis by the arbitrator. Under the standards of Section 252(e)(2)(B) of the federal Communications Act, the agreement should be approved.

The agreement is the result of a comprehensive arbitration conducted under the Commission’s rules and Section 252 of the federal Communications Act.³ As described below, both parties had the opportunity to define issues for arbitration, to present witnesses and

¹ N.D.A.C. § 69-02-10-31

² Midcontinent notes that Missouri Valley has suggested that it may seek a stay of any Commission action approving the agreement. If Missouri Valley does seek a stay, Midcontinent will file a response to that stay request promptly.

³ 47 U.S.C. § 252; N.D.A.C. Chapter 69-02-10.

documentary evidence on those issues, to cross-examine the other party's witnesses and to submit briefs. The arbitrator's decision addressed each of the defined issues and specified appropriate contractual language to implement his conclusions. Through this process, a reasonable and lawful interconnection agreement was adopted, and that agreement should be approved.

II. Procedural Background

Midcontinent first requested interconnection under Section 251(a) of the Communications Act on June 14, 2011, and filed its petition for arbitration on November 14, 2011.⁴ Missouri Valley filed its response to the Petition on December 8, 2011. These filings defined the basic issues in this proceeding and the parties and the arbitrator further refined those issues through the exchange of drafts of an interconnection agreement, submission of a chart of open issues by Midcontinent and a memorandum of issues to be considered prepared by the arbitrator.⁵

Missouri Valley sought to have this proceeding dismissed in a motion to dismiss filed on November 21, 2011, and opposed by Midcontinent on December 21, 2011. Following a hearing on February 10, 2012 and post-hearing briefs, the motion was denied on March 21, 2012.

A hearing on the open issues was held on April 4 and 5, 2012. During the hearing, each party presented witnesses and exhibits, and was afforded an opportunity to cross-examine the other party's witnesses.⁶ In addition, the arbitrator examined the witnesses for both parties. Following the hearing, the parties submitted briefs on each of the open issues and on additional

⁴ See Petition for Arbitration of Midcontinent Communications, filed Nov. 14, 2011 (the "Petition"); Letter of Nancy Vogel, Director of Revenue Assurance, Midcontinent Communications, to Mike Kilgore, General Manager, Missouri Valley (June 14, 2011), at 1, attached to the Petition as Exhibit B (the "June 14 Letter")

⁵ Recommended Decision, Apr. 27, 2012, at 2.

⁶ The arbitrator granted Midcontinent's motion to strike portions of Missouri Valley's proffered testimony on the ground that the testimony was outside the scope of the defined issues in the hearing and also granted a motion to deny admission of a revised version of Attachment 4 to the testimony of Missouri Valley witness Mike Kilgore on the ground that there was no support for the information in the exhibit.

issues designated by the arbitrator. The arbitrator also invited supplemental briefs in response to the initial briefs, and both parties filed such briefs.

The arbitrator issued his recommended decision on April 27, 2012. As required by the recommended decision, Midcontinent prepared a revised version of the interconnection agreement, and provided it to Missouri Valley on April 30, 2012. The agreement was submitted to the Commission by both parties on May 29, 2012.

III. Standard of Review of the Agreement

This agreement is being reviewed by the Commission under Section 252(e)(2)(B) of the Communications Act.⁷ That provision provides that a state Commission can reject an agreement “adopted by arbitration” only

if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.⁸

This is a very narrow standard. It requires an agreement to be approved so long as the arbitrator’s decision and the resulting agreement are not in conflict with the statute and the FCC’s rules. Under this standard, an agreement resulting from an arbitration decision must be approved even if some other decision might have been reasonable.

The intent of this provision is two-fold: First, it protects carriers against decisions that ignore legal requirements in the Communications Act and the FCC’s rules and, second, it protects carriers against delays that could be caused by reconsideration or reevaluation of reasonable but contested decisions by arbitrators. In this case, and as discussed below, the arbitrator’s decision is reasonable and, in every case, within the scope of both the FCC’s rules

⁷ See also N.D.A.C. § 69-02-10-33 (“The arbitration procedure must be governed by the provisions of the Telecommunications Act of 1996...”).

⁸ 47 U.S.C. § 252(e)(2)(B).

and the parties' proposals on the issues. Therefore, the agreement that implements that decision should be approved.

IV. The Recommended Decision Adopts Reasonable and Lawful Provisions for Each Disputed Element of the Agreement.

A. Effective Date of the Agreement

The Recommended Decision adopted Midcontinent's proposal that the agreement become effective on the date of approval by the Commission unless a stay is granted.⁹ This determination was both reasonable and lawful.

First, it is reasonable. Approval of an arbitrated interconnection agreement, as described above, is contingent on a conclusion that the agreement is lawful, and therefore it should be presumed that there is no bar to putting the agreement into effect. Missouri Valley's proposal, which would have in effect created an automatic stay that would not have been lifted until all appeals were exhausted, would reverse that presumption. Midcontinent's proposal, on the other hand, reflects the expectation that the approved agreement will be lawful, but also gives Missouri Valley the opportunity to obtain a stay if it can convince this Commission or a federal court that the legal criteria for a stay have been met.¹⁰ Further, the arbitrator found that the evidence showed that "delaying the effective date of the agreement could have adverse effects on customers in Williston and on Midcontinent."¹¹ Thus, reversing the usual presumption would have caused harm.

Second, allowing the agreement to go into effect is consistent with the Congressional intent to ensure that arbitration proceedings would be completed expeditiously and that

⁹ Recommended Decision at 6-7, Agreement, §§ 1.1, 2.2

¹⁰ As Midcontinent explained in its brief following the arbitration, Missouri Valley will be unable to meet the substantive criteria for a stay. *See* Midcontinent Post-Hearing Brief at 29-33.

¹¹ Recommended Decision at 6.

competition would begin promptly after an arbitration is completed.¹² The specific limitations on the time for arbitration and approval of agreements in the Communications Act demonstrate that Congress did not expect interconnection to be delayed. Thus, adoption of Midcontinent's proposal is consistent with the legal requirements of the Communications Act.

B. Dispute Resolution for Impasses as to Points of Interconnection

The Recommended Decision rejected a proposal by Missouri Valley to exempt disputes concerning future points of interconnection from the dispute resolution provisions of the agreement. This is an appropriate decision.

Neither the Communications Act nor the FCC's rules contain any specific requirements concerning dispute resolution. However, in practice every interconnection agreement contains dispute resolution provisions, and Midcontinent is unaware of any interconnection agreement that contains an exemption from all dispute resolution processes. In the absence of a dispute resolution provision, it would be unclear how the parties could enforce their rights, which could lead to unnecessary litigation and confusion. Further, Missouri Valley, in testimony and in its brief, did not object to the use of binding arbitration, so it is clear the Missouri Valley agrees that some form of dispute resolution is necessary.¹³ Thus, the language adopted by the Recommended Decision is reasonable and is not inconsistent with the requirements of applicable law.

C. Reciprocal Compensation

The Recommended Decision adopted reciprocal compensation language that combined elements of Missouri Valley's proposal with elements of Midcontinent's alternative to its

¹² 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).

¹³ Missouri Valley Brief, Apr. 20, 2012, at 12.

preferred proposal.¹⁴ The adopted language provides for compensation to start at a rate of \$0.004/minute, with a four-year ramp down to bill and keep, and for compensation to be paid when the traffic balance is outside a collar of 55-45 in the first two years and outside a collar of 60-40 in later years.¹⁵ Given the evidence proffered during the arbitration and the FCC's rules, this is a reasonable result.

Under Section 252(d)(2) of the Communications Act, rates for reciprocal compensation must be based on the "additional cost" of terminating calls.¹⁶ The FCC's current rules require an incumbent carrier's reciprocal compensation rates either to be set to the forward-looking economic cost, based on a cost study, or to be set at bill-and-keep.¹⁷

While no cost study was provided by Missouri Valley (the party in possession of the information necessary to prepare a cost study), there was significant evidence in the proceeding of the likely range of cost-based rates. That evidence showed that the average rate charged by the 15 other carriers that interconnect with Midcontinent in North Dakota was \$0.0041/minute; that Qwest's rate in North Dakota, which includes tandem switching that Missouri Valley will not provide, is \$0.0035/minute, and that the FCC's original proxy rates for reciprocal compensation were set to a range of \$0.002/minute to \$0.004/minute.¹⁸ In addition, under the FCC's intercarrier compensation rules, the only other carriers that interconnect with Missouri Valley will operate under bill-and-keep arrangements as of July 1.¹⁹ In this context, it was

¹⁴ Midcontinent proposed bill and keep compensation, but agreed that it would be reasonable for the arbitrator to adopt compensation rates that approximated the typical costs of other providers. Midcontinent Brief at 7.

¹⁵ Recommended Decision at 8-12.

¹⁶ 47 U.S.C. § 252(d)(2)(A)(ii).

¹⁷ 47 C.F.R. § 51.705(b)(2).

¹⁸ Direct Testimony of Timothy J. Gates at 34-40; Tr. at 342 (Duval cross-examination).

¹⁹ Recommended Decision at 9; 47 C.F.R. § 51.705(a); see Tr. at 126-7 (Gates).

reasonable for the arbitrator to determine that “\$0.004/minute was the highest reasonable rate to recover the incremental costs associated with reciprocal compensation[.]”²⁰

It also was reasonable for the arbitrator to adopt a ramp down of the reciprocal compensation rate to bill-and-keep over time and a widening collar on the traffic ratio at which compensation must be paid. These mechanisms are, as the arbitrator held “consistent with the FCC’s intent to reduce intercarrier compensation rates and for carriers to recover those costs over time from their own customers.”²¹ Further, given that the alternative under the FCC’s rules is bill-and-keep from the start, this ruling is the approach that is most protective to Missouri Valley’s interests and still consistent with the evidence in this proceeding on reciprocal compensation costs.

D. Transition Payments

Midcontinent, as a means to ease the transition from resale to facilities-based interconnection, offered to make transitional payments to Missouri Valley for a period following the changeover of each customer to Midcontinent’s facilities.²² The arbitrator determined that such payments would be made, and adopted specific terms. Under those terms, Midcontinent will pay Missouri Valley \$22.50 per customer transferred. If all customers are transferred within a year of the date that the interconnection is in place, Missouri Valley will receive a bonus payment that will bring the total transition payments to \$70,000.²³

As Missouri Valley has acknowledged, these payments are entirely voluntary and are not required or forbidden by any rules of the FCC or this Commission.²⁴ Although the specific mechanism adopted by the arbitrator is different than Midcontinent’s original proposal, the total

²⁰ Recommended Decision at 10.

²¹ *Id.* at 11.

²² Petition, Attachment A at 2-3.

²³ Recommended Decision at 14-15.

²⁴ Missouri Valley Post-Hearing Brief at 16.

amount of compensation is approximately the same as would have resulted from that proposal, and the arbitrator's mechanism will create additional incentives for Missouri Valley to complete the transition in a timely fashion. Therefore, it is a reasonable approach and should be approved.

E. Administrative Charges

Under the parties' current resale agreement, the administrative charge for new customer activations is \$22.50. Midcontinent proposed to continue this charge at the current level, while Missouri Valley proposed to increase the charge to \$38.50. The arbitrator determined that it was most appropriate to retain the \$22.50 charge.²⁵

The evidence during the hearing showed that there was no basis to increase the charge. Missouri Valley's witness acknowledged that its cost calculations – which were not provided – were based on fully-loaded costs, not incremental costs, contrary to the requirements of the FCC's rules.²⁶ While Missouri Valley proposed charges that were 40 percent higher than the next highest charge under any interconnection agreement between Midcontinent and a North Dakota rural carrier, it did not provide evidence that labor or other costs were higher in Williston than elsewhere in the state and, equally important, it acknowledged that its customer service operations are, in fact conducted from multiple locations, not just from Williston.²⁷ In addition, Missouri Valley imposes no charges at all on wireless carriers for customer changeovers, even though the number portability process is the same for all types of carriers.²⁸ Thus, if anything, the evidence supported eliminating these administrative charges altogether, rather than retaining the charges imposed by the resale agreement.

²⁵ Recommended Decision at 17-18.

²⁶ 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); Tr. at 306-7 (Kilgore cross-examination).

²⁷ Missouri Valley has what it described as a "distributed" customer service department, with locations spread across northwestern North Dakota and eastern Montana, so it is not limited to the Williston labor market when hiring. Tr. at 252 (Kilgore cross-examination).

²⁸ Tr. at 250 (Kilgore cross-examination) (no charges to wireless providers), 260 (Kilgore cross-examination) (no difference in porting processes); see also 47 C.F.R. § 52.26 (adopting North American Numbering Council recommendations for number portability processing flows for all carriers).

In this context, it is evident that the arbitrator's decision to maintain the existing \$22.50 charge is consistent with the evidence and, potentially, more generous than necessary. It should be approved.

F. Other Issues

Compensation for ISP-Bound Traffic. The arbitrator ruled that the agreement should not contain any provisions governing ISP-bound traffic.²⁹ Given the existence of specific FCC rules governing compensation for such traffic and given the likelihood that there will be little or no such traffic exchanged between Midcontinent and Missouri Valley, this was a reasonable decision.

Compensation for Toll Traffic. The arbitrator concluded that the parties had resolved this issue by agreeing that compensation should be in accordance with the parties' access tariffs, and therefore declined to include language concerning such traffic in the agreement.³⁰ While Midcontinent supported including language referring to the parties' tariffs in the agreement, it recognizes that the arbitrator's decision is reasonable, and does not object to it.

Customer Changeover Requirements. The arbitrator adopted Midcontinent's proposal for language to clarify that the parties' obligations for changeovers include compliance with the number portability attachment to the agreement and that Missouri Valley is required to complete the transition from resale to facilities-based services for Midcontinent customers within twelve months.³¹ These clarifications were necessary to ensure that there were no questions about the parties' obligations, and the arbitrator correctly determined that Missouri Valley has ample capacity to process Midcontinent's orders for changing over customers. In addition, the number portability clarification will maintain the parties' compliance with the FCC rules on this issue.

²⁹ Recommended Decision at 12.

³⁰ *Id.* at 13.

³¹ *Id.* at 15-17.

V. The Arbitrator Properly Considered Only Issues Within the Scope of the Petition for Arbitration and Missouri Valley's Response.

A. The Arbitrator Properly Limited the Scope of the Proceeding.

Throughout this proceeding, Missouri Valley has sought to have the Commission and the arbitrator consider issues that were outside the scope of the petition for arbitration and Missouri Valley's own responses. These efforts led to the arbitrator's decision to strike portions of Missouri Valley's prefiled testimony and to exclude certain issues from consideration during the arbitration.³² The arbitrator's decisions were correct, and Missouri Valley should not be permitted to import other issues into this proceeding.

Under Section 252(b)(2) of the Communications Act and the Commission's own rules, issues in an arbitration proceeding are defined by the petition for arbitration and the response.³³ The intent of these provisions is to limit the scope of the arbitration at the outset, which is necessary given the abbreviated time for action under the Communications Act. In this case, Missouri Valley actually was provided with an additional opportunity to specify issues by the arbitrator's scheduling order, and Missouri Valley took advantage of that opportunity by providing a response to Midcontinent's proposed interconnection agreement on February 28, 2012.³⁴ Midcontinent confirmed the list of open issues on March 14, 2012, by providing the arbitrator and Missouri Valley with a chart showing Midcontinent's original proposals, Missouri Valley's responses, the issues on which the parties had agreed and the issues that remained open. Missouri Valley did not object to Midcontinent's characterization of the status of the issues or to the list itself.

³² See Order Granting Midcontinent's Motion to Strike Testimony, Apr. 4, 2012.

³³ 47 U.S.C. § 252(b)(2), N.D. Admin. Code § 69-02-10-07.

³⁴ Letter from David Hogue, counsel to Missouri Valley, to J.G. Harrington, Counsel to Midcontinent, Feb. 28, 2012 (the "February 28th Letter"). This letter was admitted into evidence during the hearing as Exhibit 22.

Given the specific requirements of Section 252 (b)(2) and the Commission's rules and the extensive, repeated opportunities that Missouri Valley had to raise any issues it thought were relevant to the arbitration, there was no basis for Missouri Valley to seek to expand the scope of this proceeding at the time of the arbitration or afterwards. Nevertheless, in both its prefiled testimony and its post-hearing brief, Missouri Valley asked that the arbitrator consider proposals that were well beyond the scope of the defined issues and, in fact, that were contrary to the requirements of the Communications Act.³⁵ The arbitrator correctly rejected those efforts.

First, the Commission's rules and the Communications Act leave no doubt that arbitrations are limited to the specific issues defined at the outset of the proceeding, through the petition for arbitration and the response.³⁶ As noted above, the arbitrator even gave Missouri Valley an extra opportunity to define open issues, so it was particularly surprising that Missouri Valley chose to raise new issues in its prefiled testimony and, after Midcontinent's motion to strike was granted, in its post-hearing brief. Given the limitations on when issues can be raised, the arbitrator was correct not to permit the additional issues to be considered.

Second, some of Missouri Valley's proposals, notably its suggestions that Midcontinent should be subject to requirements to build out facilities, are barred by the Communications Act itself. The FCC specifically ruled that Section 253 bars any requirement that competitors build out facilities, and this has been settled law for close to 15 years.³⁷

³⁵ See Midcontinent Motion to Strike (Apr. 1, 2012) (describing eight new issues raised by Missouri Valley in its prefiled testimony); Midcontinent Supplemental Brief (Apr. 26, 2012) at 2-3 (noting that proposal to condition Midcontinent's certificate, made for the first time in Missouri Valley's post-hearing brief, was barred by decision on motion to strike and contrary to Section 253 of the Communications Act).

³⁶ See 47 U.S.C. § 252(b)(2) (requiring petitioning party to submit list of issues and permitting responding party to add issues in its response); N.D. Admin. Code § 69-02-07 (describing opportunity for responding party to "present additional issues" in its response).

³⁷ Public Utility Commission of Texas, *Memorandum Opinion and Order*, 13 FCC Rcd 3460, 3466 (1997) (holding that build out requirements are preempted "because they restrict the means or facilities through which a party is permitted to provide service in violation of section 253, and, independently, because they impose a financial burden that has the effect of prohibiting certain entities from providing telecommunications services in violation of section 253").

Missouri Valley's alternative proposal that Midcontinent should be subject to eligible telecommunications carrier requirements that would require it to build out facilities in Williston, made for the first time in its post-hearing brief and made without any support in the record, also is barred by Section 253 and, further, depends on a misreading of the exemption for rural areas contained in Section 253(f). Under Section 253(f), Midcontinent cannot be required to build out facilities in Williston. In fact, Section 253(f) permits a state commission to require a competitive carrier to qualify as an ETC *only* if resale is available from the rural incumbent, so that the competitive carrier can meet its ETC obligations through resale, rather than having to build out its facilities to cover the entire rural carrier service area.³⁸

B. Missouri Valley Did Not Present Any Competent Evidence that It Would Suffer Meaningful Harm from Competition.

Missouri Valley has claimed throughout this proceeding that the implementation of facilities-based interconnection would cause harm to its business and potentially endanger its operations in Williston. However, there is no competent evidence in the record to support these claims.

First, Missouri Valley presented no admissible evidence of financial harm. While Missouri Valley proposed admission of an exhibit that purported to show the impact of facilities-based competition, that exhibit was excluded by the arbitrator because it lacked any foundation.

In fact, Missouri Valley's witness could not explain:

- How the exhibit was created;
- The basis for the cost projections in the exhibit;
- The financial basis for the changes Missouri Valley proposed from its initial version of the exhibit (which showed Missouri Valley would make a significant profit on an ongoing basis, even with competition); or

³⁸ 47 U.S.C. § 253(f).

- Whether the projected access revenues in the exhibit included charges for toll free calls, revenues from the new FCC access recovery charge or money from the federal universal service fund.

Thus, Missouri Valley provided no basis at all to believe that its analysis was reliable or credible. Since this was the only evidence of the financial impact of interconnection provided by Missouri Valley, there also is no basis to conclude that Missouri Valley will be harmed in any meaningful way by competition.

Further, all of the evidence on the issue of the impact of competition on rural carriers in North Dakota shows that no rural carrier in North Dakota has suffered any meaningful harm from competition.³⁹ As Missouri Valley's own expert witness testified, Missouri Valley also has a variety of options available to it to enhance its ability to compete in Williston, including offering video service or partnering with another video provider like DirecTV.⁴⁰

VI. The Public Interest Strongly Supports Approval of the Agreement and Facilities-Based Interconnection in Williston.

Although the Communications Act and the Commission's rules do not consider public interest issues in determining whether an arbitrated agreement should be approved, it also is important to note that approval of the agreement, and the implementation of facilities-based interconnection in Williston, will create significant public interest benefits. These benefits further justify prompt action to approve the agreement.

Today, the public in Williston has access only to telephone service that ultimately is provided by Missouri Valley, and Midcontinent is dependent on Missouri Valley to serve any customers. The result, in one of the most dynamic economic environments in North Dakota, is

³⁹ See, e.g., Direct Testimony of W. Thomas Simmons at 7-8.

⁴⁰ See Exhibit 3 at 47-59 (portions of presentation by Missouri Valley witness Duval to National Telephone Cooperative Association describing steps that rural carriers can take to operate more profitably); 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.").

that customers are being left unserved, often for weeks at a time. By its own admission, Missouri Valley cannot keep up with the demand.⁴¹

In fact, the record establishes that there are places in the Williston exchange that are served by Midcontinent but not Missouri Valley, which means that customers cannot get telephone service at all, even though they can get cable and high speed Internet over Midcontinent's facilities.⁴² Midcontinent will be able to provide telephone service to these locations, and everywhere its cable plant has been deployed, as soon as interconnection is in place. Thus, competition will benefit consumers in Williston by increasing the availability of service.⁴³

Competition in Williston also will benefit consumers by lowering prices, increasing innovation and creating positive incentives to improve quality of service. For instance, Midcontinent's telephone service generally includes call waiting, three-way calling and other calling features at no charge, which saves customers money.⁴⁴ Midcontinent also will be able to bring new features to its customers in Williston, including voice mail, distinctive rings and caller ID on the television screen.⁴⁵

⁴¹ Missouri Valley's financial reports indicate that it has been disinvesting in Williston for years by spending less on plant and equipment than it takes in depreciation expense. As a result, Missouri Valley's net property, plant and equipment declined from \$23.6 million on December 31, 2007, to \$21.0 million on December 31, 2011, despite the growth in Williston. Midcontinent acknowledges that these reports were provided in discovery and were not introduced into evidence. However, they are helpful to understanding the reasons that Missouri Valley has not met the growing demand in Williston

⁴² Direct Testimony of W. Thomas Simmons at 4-5; Petition for Arbitration at 2.

⁴³ Missouri Valley has attempted to assert that some harm might arise from the difference between the size of the territory it is obligated to serve and the size of the territory served by Midcontinent. This is incorrect. First, as noted above, the testimony shows that there are places that Missouri Valley does not serve that are reached by Midcontinent's facilities. Second, Missouri Valley is entitled to – and does – charge customers for line extensions. The testimony established that Missouri Valley has done so repeatedly over the last several years. Tr. at 285-88 (Kilgore cross-examination) (acknowledging that Missouri Valley receives payments for unusually long line extensions); Exhibit 5 (list of instances in which Missouri Valley received reimbursements for line extensions). As a result, Missouri Valley is compensated for extra costs it incurs to serve remote customers.

⁴⁴ Direct Testimony of W. Thomas Simmons at 5-6; Direct Testimony of Timothy J Gates at 17.

⁴⁵ Direct Testimony of W. Thomas Simmons at 6-7; Direct Testimony of Timothy J Gates at 17.

The importance of the benefits of competition is heightened in areas like Williston that are experiencing significant growth. Having two facilities-based service providers in Williston will make it easier for customers to get the services they want, at better prices and with better service quality. This will make Williston an even more attractive place to live and to do business, helping to foster the growth that already is occurring. Thus, even though the Commission does not consider public interest benefits in evaluating arbitrated interconnection agreements, those benefits strongly support approval and prompt implementation of the agreement.

VII. Conclusion

The Commission should approve the interconnection agreement between Midcontinent and Missouri Valley, consistent with the Recommended Decision in this proceeding..

Dated: June 13, 2012

PEARCE & DURICK

/s/ Zachary E. Pelham

PATRICK W. DURICK, *ND #03141*
ZACHARY E. PELHAM, *ND #05904*
Individually and as Members of the Firm
314 E. Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890
(701) 333-0126 – Fax
pwd@pearce-durick.com
zep@pearce-durick.co

/s/ J. G. Harrington

J.G. HARRINGTON
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 776-2818
(202) 776-2222 - Fax
jharrington@dowlohn.com

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF)	
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Midcontinent Communications, a)	
South Dakota Partnership,)	Case No. PU-11-697
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Complainant,)	
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Respondent.)	

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

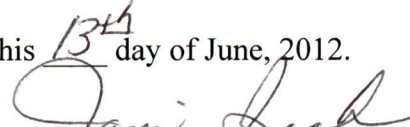
Annette Kirschenheiter, being first duly sworn, deposes and says that on the 13th day of June, 2012, she mailed copies of the foregoing *Comments of Midcontinent Communications* by placing a true and correct copy thereof in an envelope, addressed to the following:

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

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


Annette Kirschenheiter

Subscribed and sworn to before me this 13th day of June, 2012.



Notary Public

