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JUN 18 2012

PUBLIC SERVICE COMMISSION

June 18, 2012

Mark Gruman  
Attorney at Law  
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Via Electronic Mail  
[mgruman@nd.gov](mailto:mgruman@nd.gov)

**RE: Midcontinent Communications v. Missouri Valley Communications Inc.  
PU-11-697**

Dear Mr. Gruman:

I am writing to respond to Mr. Pelham's e-mail to you of June 15, 2012. According to Mr. Pelham, the public comments filed by Missouri Valley are "somewhat concerning" to Midcontinent Communications, Inc. ("Midcontinent"). Midcontinent construes the North Dakota Administrative Code to require public comments in this proceeding to be limited to the "issues to be considered in connection with approval of an arbitrated interconnection agreement, ..."

Midcontinent's June 15, 2012 email acknowledges the Commission's rules do not authorize further input from the parties, but it twice volunteers to provide further argument "to the extent the Commission would need any clarification on any of Midcontinent's positions in this matter, . . ." In the same email, Midcontinent proceeds to make further legal argument as if the Commission had accepted Midcontinent's offer for more argument.

Concerning the scope of public comments, Midcontinent does not cite to a specific rule, but I assume it is referring to § 69-02-10-31 of the North Dakota Administrative Code. That section reads:

**"69-02-10-31. Public Comments.** Any person may file written comments on the Interconnection Agreement within fifteen days of the date of filing of the agreement with the commission. Each of the arbitrating parties may also file comments within the same time frame."

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Letter response to email comments of Midcontinent  
Communications

There is no apparent subject matter limitation on the scope of the public comments under § 69-02-10-31, NDAC, other than a relation to the interconnection agreement. Midcontinent would understandably like to restrict the public comments to the specific provisions within the interconnection agreement rather than the broader policy issue of whether the interconnection agreement should be compelled in the first instance. However, Section 69-02-10-31, NDAC contains no such limitation on the scope of public comments.

This case is about the involuntary imposition of an interconnection agreement, not a negotiated agreement between two willing parties. Commission staff and the Commissioners discussed the policy issues of an imposed interconnection agreement at the working session of June 14, 2012.

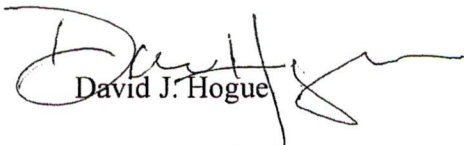
Missouri Valley believes the Commission has a responsibility to evaluate whether the interconnection agreement is in the public interest. Missouri Valley's belief is grounded in § 49-21-02(2), NDCC, which directs the Commission to consider "the development of competitive markets for telecommunications services *where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public*, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition." [Italics added.]

The Commission has a separate but similar inquiry under the "rural exemption" of the federal act, which directs the Commission to consider a termination or retention of a small telecommunications company's "rural exemption" under appropriate circumstances. *See 47 USC § 251(f)*.

The Commission has a policy decision to make, and that overarching issue is the subject of fair public comment. As I review the record, there were public comments from eight non-parties, all of whom discussed the broader policy issue of whether the Commission should impose the interconnection agreement.

On an unrelated inquiry, I would like confirmation from you that, in the event of a split vote between Commissioners Cramer and Kalk, a motion to adopt the interconnection agreement or the arbitrator's recommend decision fails. Can you confirm?

Very truly yours,



David J. Hogue

cc: Zachary Pelham  
Mike Kilgore