

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Midcontinent Communications/Missouri Valley
Communications, Inc.
Interconnection Arbitration**

Case No. PU-11-697

ORDER ON INTERCONNECTION AGREEMENT

June 27, 2012

Appearances

Commissioners Kevin Cramer and Brian P. Kalk.

Patrick Ward, Arbitrator, 316 N. 5th Street, Bismarck, North Dakota 58502-1695.

Patrick Fahn, Director Compliance and Competitive Markets, North Dakota Public Service Commission.

Mark Gruman, Legal Counsel, North Dakota Public Service Commission

Preliminary Statement

On June 14, 2011 Midcontinent Communications (Midcontinent) requested from Missouri Valley Communications, Inc. (Missouri Valley) interconnection and exchange of local traffic under § 251(a) and (b)(5) of the Telecommunications Act. After the matter was unable to be resolved in mediation (please see Case No. PU-11-543), on November 14, 2011 Midcontinent filed with the North Dakota Public Service Commission (Commission) a petition for arbitration.

On November 21, 2011 Missouri Valley filed a motion to dismiss Midcontinent's petition for arbitration. 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.

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 and made a part of the Public Service Commission record in this matter.

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

In both the letter requesting interconnection and petition for arbitration, Midcontinent sought to obtain facilities-based interconnection “for the purpose of exchanging local traffic” under Section 251(a) of the Communications Act and reciprocal compensation and number portability under Section 251(b) of the Communications Act. Midcontinent proposed to retain the companies’ current arrangements for the exchange of intrastate toll traffic.

United States Code § 47 USC § 251 provides that each telecommunications carrier has a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers and in § 251(b), each local exchange carrier has an additional duty to (1) not impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunication services, (2) provide number portability, (3) provide dialing parity which includes the duty to permit all providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays, (4) access to rights of way, and (5) reciprocal compensation, which is a duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Missouri Valley retains its status as an exempt rural telephone company under § 251(f) and Midcontinent does not at this time request that the state terminate that rural exemption. Because Missouri Valley retains its rural exemption, the additional obligations on incumbent local exchange carriers at § 251(c) do not apply to Missouri Valley. These include among others the (1) duty to negotiate in good faith, (2) interconnection for transmission and routing of telephone exchange service and exchange access, (3) unbundled access, and (4) collocation.

The application of 47 USC §§ 251(a) and (b) to rural incumbent local exchange carriers was recently clarified in a declaratory ruling by the Federal Communications Commission on May 26, 2011. 26 FCC Rcd at 8272. That opinion clarified that the rural exemption does not exempt rural LECs from the requirements of § 251(b) including § 251(b) number portability obligations. The FCC there stated, “For consumers to have a choice of service providers, competitive carriers must be able to interconnect their networks with incumbent providers . . . [and] . . . when incumbent carriers resist interconnection with competitive telecommunication carriers, it impedes the development of facilities based voice services in those areas.” This decision clarified that all carriers, including rural carriers, have a basic duty to interconnect their networks under § 251(a) and that all LECs, including rural LECs covered by § 251(f) (1) have the obligation to comply with the requirements set out in § 251(b). They further noted that their clarification means that the rural exemption only exempts a rural carrier from the requirements of § 251(c) and does not release it from its obligations under § 251(a) or (b).

In paragraph 19 of that decision, the FCC also clarified that requests made to incumbent LECs for interconnection and services pursuant to § 251(a) and (b) are subject to state commission arbitration and are also subject to voluntary negotiation remedies including mediation by the state commission.

Section 252(e) directs the state commission to review “any interconnection agreement adopted by negotiation or arbitration,” and grants the state commission authority to reject any interconnection agreement “if it finds the agreement does not meet the requirements of § 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) [of section 252].”

In that decision, the FCC recognized that the obligation of a rural incumbent LEC under § 251(a) and (b) includes basic interconnection, dialing parity, number portability and reciprocal compensation, even when the rural incumbent LEC is exempt from the more rigorous obligations under § 251(c). Petition of CRC Communications of Maine, Inc., and Time Warner Cable Inc., FCC declaratory ruling, released May 26, 2011. 26 FCC Rcd at 8272.

Section 47, USC § 252 spells out the powers of a state commission and arbitrator in resolving interconnection disputes under § 251(a) and (b). Section 252(b)(4)(A) provides that the state commission shall *limit its consideration of any petition to the issues set forth in the petition and in the response.* (emphasis added). Subsection 4(C) provides that the state commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required.

On April 27, 2012 Arbitrator Pat Ward issued an Arbitrator’s decision, constituting a resolution of the remaining issues submitted for arbitration. Those issues are: (1) Effective Date of the Interconnection Agreement; (2) Dispute Resolution for Impasses as to Points of Interconnection; (3) Reciprocal Compensation; (4) Compensation for ISP-Bound Traffic; (5) Compensation for Termination of Toll Traffic; (6) Calculation of Transition Payments; (7) Obligations to Transfer Customers; (8) Administrative Charges for Customer Changes.

On May 29, 2012 Midcontinent filed with the Commission an Interconnection Agreement, pursuant to Arbitrator Ward’s April 27, 2012 Arbitrator’s decision and N.D. Admin. Code § 69-02-10-30.

N.D. Admin. Code § 69-02-10-32 requires approval or rejection of the May 29, 2012 Interconnection Agreement within thirty days of its filing with the Commission.

The Commission makes the following Conclusions of Law and Order:

Conclusions of Law

1. The Commission has jurisdiction over the parties and subject matter hereto.

2. The Commission takes Administrative Notice of Docket Item 62 for Case No. PU-11-697, "Recommended decision of the arbitrator."

3. The Commission takes Administrative Notice of Public Service Commission Docket Item 65 for Case No. PU-11-697, "Jointly filed interconnection agreement."

4. The May 29, 2012 agreement filed by Midcontinent with the Commission is an Interconnection Agreement for the purposes of N.D. Admin. Code § 69-02-10-30.

Order

The Commission Orders that the May 29, 2012 Interconnection Agreement is APPROVED.

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Brian P. Kalk
Chairman**

Vacant