

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Missouri Valley Communications, Inc. )  
)  
Plaintiff, )  
)  
vs. )  
)  
North Dakota Public Service Commission and )  
Kevin Cramer, Bonny Fetch and Brian Kalk, )  
in their official capacities as Commissioners )  
of the North Dakota Public Service )  
Commission, and Midcontinent )  
Communications, a South Dakota Partnership, )  
)  
Defendants, )

Case No. 4:12-cv-091

**ANSWER OF MIDCONTINENT COMMUNICATIONS**

COMES NOW Midcontinent Communications, a South Dakota Partnership (“Midcontinent”), and for its answer to the complaint of Plaintiff Missouri Valley Communications, Inc. (“Missouri Valley”), responds as follows:

I.

This matter concerns the June 27, 2012, Order on Interconnection Agreement by the North Dakota Public Service Commission (“PSC”), which affirmed a proposed decision by an arbitrator that adopted terms and conditions for an interconnection agreement between Midcontinent and Missouri Valley in accordance with Section 252 of the Communications Act of 1934, 47 U.S.C. § 252, and the implementing rules of the Federal Communications Commission (the “FCC”). That agreement was adopted in accordance with a 2011 FCC order that determined that competitive local exchange carriers like Midcontinent are entitled to interconnection under Section 251(a) of the Communications Act, 47 U.S.C. § 251(a) and to arbitration under Section 252 to determine the terms and conditions of that interconnection. Missouri Valley’s complaint demonstrates that it has no quarrel with the decisions made in the

arbitration. The complaint does not claim that any element of the arbitration decision is contrary to law or the evidence presented at the arbitration hearing. Rather, it claims that, despite an FCC order that specifically holds that arbitration is available for Section 251(a) interconnection between competitive carriers and rural carriers, it was not required to interconnect. This order, however, is final, unappealable, and binding.

II.

Deny each and every allegation contained in Missouri Valley's complaint, except those hereinafter admitted or qualified.

III.

Midcontinent admits the allegations contained in paragraphs 1, 2, and 4.

IV.

With respect to the allegations of paragraph 3, Midcontinent admits its Petition for Arbitration was filed with the North Dakota Public Service Commission ("PSC") on November 14, 2011, and that the Petition speaks for itself. To the extent the allegations of paragraph 3 conflict with Midcontinent's Petition for Arbitration, Midcontinent denies the remaining allegations.

V.

With respect to allegations contained in paragraph 5, Midcontinent admits the PSC issued its Findings of Fact, Conclusions of Law, and Order dated March 21, 2012, denying Missouri Valley's motion to dismiss and the document speaks for itself. To the extent the allegations of paragraph 5 conflict with the PSC's Findings of Fact, Conclusions of Law, and Order dated March 21, 2012, Midcontinent denies the remaining allegations.

VI.

With respect to allegations contained in paragraph 6, Midcontinent admits the PSC issued

its Order on Interconnection Agreement dated June 27, 2012, and that document speaks for itself. To the extent the allegations of paragraph 6 conflict with the PSC's Order on Interconnection Agreement, Midcontinent denies the remaining allegations.

VII.

With respect to the allegations of paragraph 7, Midcontinent admits its Petition for Arbitration sets forth its request for a facilities-based interconnection agreement with Missouri Valley, and that document speaks for itself. To the extent the allegations of paragraph 7 conflict with Midcontinent's Petition for Arbitration, Midcontinent denies the remaining allegations.

VIII.

With respect to the allegations of paragraph 8, Midcontinent admits its Petition for Arbitration, its letter requesting interconnection with Missouri Valley, and the PSC's Findings of Fact, Conclusions of law, and Order dated March 21, 2012, accurately reflect Midcontinent's request for a facilities based interconnection agreement with Missouri Valley, and those documents speak for themselves. To the extent the allegations of paragraph 8 conflict with Midcontinent's Petition for Arbitration, Midcontinent's letter requesting interconnection with Missouri Valley, and the PSC's Findings of Fact, Conclusions of law, and Order dated March 21, 2012, Midcontinent denies the remaining allegations.

IX.

With respect to the allegations of paragraphs 9, 10, 11, 12, 13, 15, 16, 18, 27, and 28, Missouri Valley alleges a legal conclusion and/or argument on disputed legal claims to which no response is required. To the extent responses are required, Midcontinent denies the allegations contained in paragraphs 9, 10, 11, 12, 13, 15, 16, 18, 27, and 28.

X.

With respect to the allegations contained in paragraph 14, Missouri Valley alleges a legal conclusion to which no response is required. To the extent a response is required, Midcontinent has previously set forth its legal arguments and contentions to the PSC and Midcontinent relies on its prior arguments and to the extent the allegations of paragraph 14 conflict with Midcontinent's prior legal arguments denies the allegations.

XI.

With respect to the allegations contained in paragraph 17, Missouri Valley alleges a legal conclusion to which no response is required. To the extent a response is required, Midcontinent states the cited statutes speak for themselves and to the extent the allegations of paragraph 17 conflict with federal law denies the allegations and, to the extent that Missouri Valley is asserting that it meets the requirements for obtaining a rural exemption, Midcontinent lacks sufficient knowledge of the factual basis for Missouri Valley's claim and therefore also denies the allegations in paragraph 17 for that reason. Midcontinent admits it sought interconnection with Missouri Valley pursuant to 47 U.S.C. § 251(c)(2) in 2008 and denies that its interconnection request in 2011 was made pursuant to 47 U.S.C. § 251(c)(2) or was subject to the rural exemption

XII.

With respect to the allegations contained in paragraph 19, the federal district court's April 15, 2010, Order in Case No. 1:09-cv-017 speaks for itself and Midcontinent denies the allegations of paragraph 19 to the extent they conflict with the Order.

XIII.

With respect to the allegations contained in paragraph 20, Midcontinent responds that any requests made as to interconnection between it and Missouri Valley in PSC PU-08-061 are

contained in the record of that matter and denies the allegations contained in paragraph 20 to the extent they conflict with Midcontinent's filings in PU-08-061.

XIV.

With respect to the allegations contained in paragraph 21, Midcontinent admits an administrative hearing in PSC PU-08-061 between it and Missouri Valley occurred on or about July 9 to 10, 2008.

XV.

With respect to the allegations contained in paragraph 22, Midcontinent admits that the PSC's Findings of Fact, Conclusions of Law, and Order in PSC PU-08-061 was issued on October 8, 2008, and the Order speaks for itself. Midcontinent denies the remaining allegations of paragraph 22 to the extent they conflict with the Order.

XVI.

With respect to the allegations contained in paragraph 23, Midcontinent admits that in PSC PU-08-061 its petition for reconsideration or rehearing was denied.

XVII.

With respect to the allegations contained in paragraph 24, Midcontinent admits it filed an action with the federal district court (Case No. 1:09-cv-017), and the filings in the action speak for themselves. Midcontinent denies the remaining allegations of paragraph 24 to the extent they conflict with the documents filed in Case No. 1:09-cv-017.

XVIII.

With respect to the allegations contained in paragraph 25, Midcontinent admits in federal district court Case No. 1:09-cv-017 it and Missouri Valley moved for summary judgment.

XIX.

With respect to the allegations contained in paragraph 26, Midcontinent admits in federal district court Case No. 1:09-cv-017 the federal district court issued an order denying Midcontinent's summary judgment motion and the order speaks for itself. Midcontinent denies the remaining allegations of paragraph 26 to the extent they conflict with the order.

**AFFIRMATIVE DEFENSES**

XX.

Missouri Valley has failed to state a claim upon which relief can be granted.

XXI.

Midcontinent has complied in every respect with the requirements set forth in 47 U.S.C. § 251 in seeking a facilities based interconnection agreement with Missouri Valley and the North Dakota Public Service Commission's June 27, 2012, Order On Interconnection Agreement confirms Midcontinent complied with all federal and state requirements.

XXII.

Missouri Valley's appeal is barred because it is seeking review of a final, binding order of the Federal Communications Commission.

XXIII.

Midcontinent reserves the right to raise additional affirmative defenses in the course of discovery.

WHEREFORE, Defendant Midcontinent Communications, a South Dakota partnership, prays that the Plaintiff's Complaint be in all things dismissed with prejudice, award Midcontinent its costs and disbursements, and grant such other and further relief as the Court deems just and equitable.

Dated this 10<sup>th</sup> day of September, 2012.

PEARCE & DURICK

By:

/s/ Zachary E. Pelham

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2012, the foregoing document, **ANSWER**, was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

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