



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

**PATRICK W. DURICK**

[pwd@pearce-durick.com](mailto:pwd@pearce-durick.com)

September 5, 2012



HAND DELIVERED

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

Re: Midcontinent Communications/NDTC  
PETITION FOR APPROVAL OF FIFTH AMENDMENT TO  
INTERCONNECTION AGREEMENT.

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of MIDCONTINENT COMMUNICATION'S PETITION FOR APPROVAL OF FIFTH AMENDMENT TO INTERCONNECTION AGREEMENT.

This document is also being transmitted electronically to your office. Also enclosed is an extra copy of the Petition to be filed stamped and returned in the self-addressed, stamped envelope.

We would appreciate it if the Commission would issue a Notice of Opportunity to File Written Comments on the agreement and subsequently consider approving the agreement pursuant to 47 U.S.C. 252(e)(1).

Thank you for your attention to this matter.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

PEARCE & DURICK

  
Patrick W. Durick

Counsel to Midcontinent Communications

PWD/ak  
Enclosures

cc: David Hogue (via email)  
Pat Fahn (via email)  
Mary Lohnes (via email)

1 **PU-12-723** Filed: 9/5/2012 Pages: 9  
**Petition for approval of Fifth Amendment to  
interconnection agreement**

Midcontinent Communications

Patrick Durick

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

Case No.

Midcontinent Communications, a	)
South Dakota Partnership,	)
	)
Complainant,	)
	)
vs.	)
	)
North Dakota Telephone Company,	)
	)
Respondent.	)

**MIDCONTINENT COMMUNICATION'S PETITION FOR APPROVAL OF  
FIFTH AMENDMENT TO INTERCONNECTION AGREEMENT**

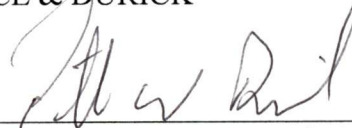
On March 12, 2012, Midcontinent Communications ("Midcontinent") made a Bona Fide Request to North Dakota Telephone Company ("Turtle NDTC") for wholesale resale of telecommunications services that NDTC provides at retail to subscribers who are not telecommunications carriers for the Drake, Anamoose and Fessenden, North Dakota, exchanges and also for an interconnection agreement with NDTC for the purpose of facilities-based interconnection, the exchange of traffic, number portability and other customary arrangements between incumbent telephone companies such as NDTC and competitive LECs such as Midcontinent for those exchanges.

Thereafter, Midcontinent and NDTC voluntarily entered into a FIFTH AMENDMENT TO INTERCONNECTION AGREEMENT. Said agreement is marked as Exhibit "A" and attached hereto.

WHEREFORE, Midcontinent requests that the Commission enter an Order approving the FIFTH AMENDMENT TO INTERCONNECTION AGREEMENT pursuant to 47 U.S.C. § 252(e)(1).

Dated this 5<sup>th</sup> day of September, 2012.

PEARCE & DURICK



---

PATRICK W. DURICK, ND #03141  
Individually and as a Member 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

*Attorneys for Midcontinent Communications*

## **FIFTH AMENDMENT TO INTERCONNECTION AGREEMENT**

THIS AMENDMENT TO INTERCONNECTION AGREEMENT ("Fifth Amendment") this \_\_\_\_ day of July 2012, and effective as herein provided by and between Midcontinent Communications, a South Dakota Partnership ("Midcontinent") with offices at 3901 N Louise Avenue, Sioux Falls, SD 57107 and North Dakota Telephone Company ("NDTC") with offices at 211 22<sup>nd</sup> St NW, PO Box 180, Devils Lake, ND 58301. This Amendment may refer to either NDTC or Midcontinent or both as a "Party" or "Parties."

### **W I T N E S S E T H**

WHEREAS, NDTC is a local exchange telecommunications company authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, Midcontinent is a competitive local exchange telecommunications company authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, the Parties have entered into an agreement (the "Agreement") pursuant to Sections 251 of the Telecommunications Act of 1996 ("the Act") for the purposes of resale of NDTC service, and that agreement has been approved by the North Dakota Public Service Commission (the "Commission"); and

WHEREAS, the Agreement was amended by Amendment to Interconnection Agreement (the "Amendment") effective March 31, 2008 and the Amendment has been approved by the North Dakota Public Service Commission (the "Commission"); and

WHEREAS, the Agreement was further amended by Amendment to Interconnection Agreement (the "Amendment") effective July 31, 2009 and the Amendment has been approved by the North Dakota Public Service Commission (the "Commission"); and

WHEREAS, the Agreement was further amended by Third Amendment to Interconnection Agreement (the "Amendment") effective July 31, 2010 and the Amendment has been approved by the North Dakota Public Service Commission (the "Commission"); and

WHEREAS, the Agreement was further amended by Fourth Amendment to Interconnection Agreement (the "Amendment") effective January 1, 2012 and the Amendment has been submitted for approval by the North Dakota Public Service Commission (the "Commission"); and

WHEREAS, the Parties wish to further amend their Agreement and amendments thereto (the "Fifth Amendment") specifically for the purposes of fulfilling their obligations pursuant to Sections 251 of the Act.

**EXHIBIT A**

NOW THEREFORE, in consideration of the mutual agreements contained herein, NDTC and Midcontinent agree as follows:

1. Substitution of Amended Terms and Conditions

Upon approval of this Fifth Amendment by the Commission, the Parties shall substitute the following documents attached hereto for the corresponding documents in their current Agreement:

1.1 General Terms and Conditions

1.1.1 Section 2.2

The resale and facilities based provisions of this Agreement shall be effective in the Rugby exchange on March 31, 2008 and July 31, 2008 respectively and shall be effective in the Harvey exchange on July 31, 2009. The resale and facilities based provisions of this Agreement shall be effective in the New Rockford exchange on July 31, 2010.

According to Section 251(f)(1)(C), a rural ILEC does not have a rural exemption from 251 interconnection obligations with respect to a request from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. Accordingly, North Dakota Telephone Company ("NDTC") will not have a rural exemption from 251 obligations once it offers video programming in Drake, Fessenden or Anamoose. NDTC shall provide Midcontinent a 30 day notice prior to offering video programming to customers located in Drake, Fessenden or Anamoose.

This amendment shall become effective upon approval by the commission. At that time, Midcontinent may proceed with augmentation of trunks, testing, and other implementation activities. However, Midcontinent shall not offer voice service to customers located in Drake, Fessenden or Anamoose until the 30 days after receiving notice of NDTC's offering of video programming in each of those cities. Accordingly, NDTC is not obligated to accept resale or port orders in each of those cities until such date.

1.1.2 Revised Exhibit 1 - Attached

1.2 Revised Resale Attachment 1 Exhibit B – Area of Resale - Attached

## 1.5 Ancillary Services Attachment


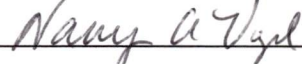
### Section 1.1

ILEC utilizes McHenry County, Ramsey County, Wells County, Sheridan County, Eddy County and Pierce County for the provision of 911/E-911 services. The CLEC is responsible for connecting to McHenry County, Ramsey County, Wells County, Sheridan County, Eddy County and Pierce County and populating McHenry, Ramsey, Wells, Sheridan, Eddy and Pierce County's database. All relations between County and CLEC are totally separate from this Agreement and ILEC makes no representations on behalf of McHenry, Ramsey, Wells, Sheridan, Eddy and Pierce Counties.

## 2. Continuance of Current Arrangements

1. The current Agreement shall remain in effect until such time as this Amendment is approved by the Commission.

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below.

NDTC	Midcontinent
By: <u></u> Name: Dave Dircks Title: General Manager Date: <u>8/28/12</u>	Midcontinent Communications By: <u></u> Name: Nancy Vogel Title: Director of Revenue Assurance By: Midcontinent Communications Investor LLC, Managing Partner of Midcontinent Communications Date: <u>9-4-12</u>

# Revised Exhibit 1

## EAS INTERCONNECTION NETWORK ARRANGEMENTS TABLE

### LOCAL CALLING SCOPE AND NPA/NXXS

<u>Exchanges in Local Calling Area</u>	<u>Midcontinent NPA/NXX</u>	<u>NDTC NPA/NXX</u>
Devils Lake Calling Area:		
Devils Lake	701-544	701-662, 665
Crary		701-398
Fort Totten		701-766
Penn		701-393
Starkweather		701-292
Warwick		701-294
Webster		701-395
Rugby Local Calling Area:		
Rugby	701-881	701-776
Balta		701-542
Knox		701-583
Harvey Local Calling Area		
Harvey	701-635	701-324
Fessenden		701-547
New Rockford Local Calling Area		
New Rockford	701-972	701-947
Sheyenne		701-996

Fessenden Local Calling Area

Fessenden	701-547
-----------	---------

Harvey	701-324
--------	---------

Drake Local Calling Area

Drake	701-465
-------	---------

## REVISED AREA OF RESALE

### **Exchange Name**

Devils Lake, North Dakota  
Rugby, North Dakota  
Harvey, North Dakota  
New Rockford, North Dakota  
Fessenden, North Dakota  
Drake, North Dakota