

RW

747-CM1

In the Matter of — IN THE MATTER OF THE FILING FOR
 APPROVAL OF AN
 INTERCONNECTION AGREEMENT
 BETWEEN MIDCONTINENT
 COMMUNICATIONS AND INTERSTATE
 TELECOMMUNICATIONS
 COOPERATIVE, INC.

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
11/12 03	Filed and Docketed;
11/13 03	Weekly Filing;
12/23 03	Order Approving Agreement;
12/22 03	Docket Closed.
3/10 04	Motion to Compel Local Number Porting or Good Faith Negotiations;
3/30 04	Opposition to Motion to Compel;
5/4 04	Order for and Notice of Procedural Schedule and Hearing;
5/14 04	Direct Testimony of Mary Lobner on behalf of Midcontinent;
5/14 04	Direct Testimony of W. Tom Simmons on behalf of Midcontinent;
5/28 04	Direct Prefiled Testimony of Jerry Deiberger;
6/16 04	Supplemental Order for and Notice of Hearing;
6/18 04	Notice of Scheduling Change;
6/21 04	Order Admitting Attorney Pro Hac Vice (J. H. Harrington);
6/22 04	Order Admitting Benjamin H. Decker, Jr. and Mary J. Lisak;
7/6 04	Settlement Agreement;
7/9 04	Motion to Dismiss ^{papers of hearing held 6/21/04;}
8/18 04	Order Approving Settlement Agreement; Granting Motion to Dismiss and Closing Docket;
8/18 04	Docket Closed.

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
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November 12, 2003

OF COUNSEL
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NOV 12 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

HAND DELIVERED

Pam Bonrud, Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: ~~MIDCONTINENT COMMUNICATIONS; AMENDED CERTIFICATE OF
AUTHORITY FOR WEBSTER~~
~~Docket: TC03-068~~
~~Our file: 4056~~

Dear Pam:

Enclosed are original and ten copies of an Interconnection Agreement between Midcontinent and ITC in the above-entitled matter. Please file the enclosure for approval in the usual manner. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

*dictated by Mr. Gerdes
and mailed in his absence
to avoid delay*

BY:

DAG:mw

Enclosure

cc/enc: Karen Cremer, Harlan Best, Todd D. Boyd, Ben Dickens,
Jerry Heiberger, Tom Simmons, Nancy Vogel, Mary Lohnes

TC03-192

INTERCONNECTION AGREEMENT

between

MIDCONTINENT COMMUNICATIONS

and

INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.

for

SOUTH DAKOTA

RECEIVED
NOV 12 2003
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

INTERCONNECTION AGREEMENT

This Interconnection Agreement, made as of the _____ day of October, 2003, is between Midcontinent Communications (“Midcontinent”) and Interstate Telecommunications Cooperative, Inc. (“ITC”).

I. RECITALS

Pursuant to this Interconnection Agreement (“Agreement”), Midcontinent and ITC (collectively, “the Parties”) will interconnect their networks to one another within the Webster, South Dakota exchange which is defined by the NXX code “345” – XXXX. This Agreement includes terms and conditions for such network interconnection.

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which the parties agree to provide interconnection and the exchange of local traffic within the “345” Webster, South Dakota exchange. The Agreement includes all accompanying appendices.
- B. In the performance of their obligations under this Agreement, the Parties shall act consistent with their lawful obligations. Where notice, approval or similar action by a Party is permitted or required in writing by any provision of this Agreement, such action shall not be unreasonably delayed, withheld or conditioned.
- C. The Parties agree and understand that the per minute reciprocal transport and termination rates set forth in Appendix A to this Agreement are not based on a specific costing methodology or company specific cost study.

- D. The Parties agree and understand that this Agreement does not affect ITC's status as a "rural telephone company" for purposes of Section 251(f)(1) of the Communications Act of 1934, as amended.
- E. The Parties agree that their entry into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements and/or matters related to cost recovery covered in this Agreement. The execution of this Agreement by the Parties is not a concession or waiver in any manner concerning their position that certain rates, terms, and conditions contained herein may or may not be required by law.

III. DEFINITIONS

- A. "Act" means the Communications Act of 1934 (47 U.S.C. § 151, et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted judicially and in the duly authorized rules and regulations of the FCC or the South Dakota Public Utilities Commission (SD PUC)
- B. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter that refers to the number transmitted through a network identifying the calling party.
- C. "Commission" means the South Dakota Public Utilities Commission.
- D. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. The CCS used by the Parties shall be Signaling System 7.

- E. “Interconnection” is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of telecommunications traffic.
- F. “ISP-bound Traffic” has the same meaning as in the FCC’s Order on Remand and Report and Order in the matter of Intercarrier Compensation for ISP-bound Traffic. 16 F.C.C.R.9151 (2201) (“FCC ISP Order”).
- G. “LIS” is defined as local interconnection services. Only LIS circuits may be used to route Local Traffic between the Parties. No long distance toll traffic may be routed over LIS circuits.
- H. “Local Traffic” means traffic, other than ISP-bound Traffic, that is originated by an end user of one Party in the “345” exchange and terminates to an end user of the other Party in the same exchange.
- I. “North American Numbering Plan” or “NANP” means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- J. “NXX” means the fourth, fifth and sixth digits of a ten-digit telephone number.
- K. “Party” means either Midcontinent or ITC and “Parties” means Midcontinent and ITC.
- L. “Point of Interface” or “POI” is a mutually agreed upon point of demarcation where the exchange of traffic between Midcontinent and ITC takes place, as set forth in Appendix B, which may be changed from time to time upon mutual agreement in writing between the parties.

- M. “Telecommunications Carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226 of the Act).
- N. “Transit Traffic” is traffic that, for purposes of this Agreement only, neither originates nor terminates with the party providing the transit service. Transit services and related rates are not covered by this Agreement.
- O. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined therein.

IV. RECIPROCAL TRAFFIC EXCHANGE

A. Scope

Reciprocal traffic exchange addresses the exchange of local traffic between the Parties.

B. Types of Traffic

1. The types of traffic to be exchanged under this Agreement are limited to Local Traffic and ISP-bound Traffic as described above.
2. The traffic not covered by this Agreement includes all other traffic, and certain ancillary traffic such as:
 - a. Directory Assistance
 - b. Operator call termination
 - c. 800/888 database dip
 - d. LIDB
 - e. Information services requiring special billing

- f. Wireless traffic terminating on either Party's network from a Commercial Mobile Radio Service provider
- g. 911
- h. Transit traffic

V. INTERCONNECTION

A. Definition

"Interconnection" is the linking of the Midcontinent and ITC networks for the mutual exchange of local and/or ISP-bound traffic, and the completion of calls to the called customer, by the party terminating the call on its side of the POI.

B. Physical POI

Each Party is responsible for providing its own facilities, including the cost of those facilities, up to the actual physical POI. The Parties will negotiate the facilities arrangement for the interconnection of their respective networks at the physical POI. Refer to Appendix B.

C. Service Interruptions

1. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the other Party's plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either

Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service."

2. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) for such service. Each Party shall provide a method for receiving trouble reports on a 24-hour basis. A mechanized recording process that is reviewed during normal business hours shall satisfy this requirement.
3. Each Party shall furnish a trouble reporting telephone number.
4. Before either Party reports a trouble condition, it shall use its best efforts to be sure that the trouble is not caused by its own facilities.
 - a. In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority assigned to their own services.
 - b. The Parties shall promptly cooperate in isolating trouble conditions.

D. NUMBER PORTABILITY

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to

provide number portability or to agree upon terms and conditions for number portability.

VI. DIALING PARITY

The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act.

VII. NOTICE OF CHANGES

If a Party makes a change in its network that it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide thirty days advance notice of such change to the other Party.

VIII. MISCELLANEOUS TERMS

A. General Provisions

1. Each Party is individually responsible to provide facilities within its network necessary for routing, carrying, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with the other Party's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under this Agreement.
2. Midcontinent may place its equipment at ITC's facilities, if at all, only pursuant to a separate agreement with ITC.
3. Neither Party shall interconnect its facilities or provide service related to this Agreement in a manner that interferes with a customer's existing service, prevents a customer from using its existing service, or otherwise impairs the quality of a customer's existing service

provided by the other Party. Each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party with notice of such violation at the earliest practicable time.

4. Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.
5. The Parties shall cooperate in minimizing fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

B. Term of Agreement

This Agreement shall become effective upon Commission approval pursuant to Sections 251 and 252 of the Act. The end of the initial term of this Agreement shall be December 31, 2005. The Agreement shall automatically renew for one-year terms unless written notice terminating the Agreement is provided by either Party no later than six months before the end of the then-current term.

C. Compensation

1. Local Traffic

The Parties agree that compensation for call termination for Local Traffic (i.e., the completion of a local call by a Party to the called customer on the side of the POI of the Party completing the call) shall be based upon rates set forth in Appendix A, and upon the reciprocal compensation methodology set forth therein.

2. ISP Bound Traffic

The Parties agree that ISP-bound Traffic is governed by the FCC ISP Order. The Parties agree to exchange ISP-

bound traffic utilizing the bill and keep compensation mechanism.

D. Billing and Payment

1. Each Party shall bill on a monthly basis for services provided pursuant to this Agreement.
2. The Parties shall pay invoices within forty-five (45) days receipt of the invoice.
3. A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
4. A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
5. If the dispute is resolved in favor of the invoicing Party, then the disputed amount plus the late payment charge shall be paid to the invoicing Party within twenty (20) days of the resolution of the dispute.
6. Any amounts owed under the terms of this Agreement if not paid when due, shall be subject to a late payment fee equal to the greater of (a) one and one-half percent per month or (b) the highest rate of interest that may be charged under applicable law, compounded daily from the date on which payment was due until the date on which payment is made.

CONFIDENTIAL

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F. Taxes

Each Party securing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such securing Party (or the providing Party when such providing Party is permitted to pass along to the securing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.

G. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). In the event of a labor dispute or strike, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

H. Limitation of Liability

1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agents or contractors in performing the obligations contained in this Agreement.

2. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.
3. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.
4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

I. Warranties

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

J. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other

Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

K. Severability

In the event that any one or more of the provisions contained herein shall for any reason be determined to be unenforceable or in conflict with state or federal law in any respect, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may pursue its lawful remedies.

L. Nondisclosure

All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data furnished by one Party to the other Party shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information.

M. Survival

The Parties' obligations under this Agreement that by their nature are intended to continue beyond the termination or expiration of this Agreement, including the provisions of Section VIII (L), shall survive the termination or expiration of this Agreement.

N. Dispute Resolution

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents (“Dispute”) cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association (“AAA”), or in the alternative pursuant to the jurisdiction of the appropriate regulatory agency. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator’s award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys’ fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration shall occur in Sioux Falls, SD. Nothing in this Section shall be construed to waive or limit either Party’s right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

O. Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of South Dakota. It shall be interpreted solely in accordance with the terms of the Act and the applicable South Dakota law.

P. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Q. Notices

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Midcontinent Communications
Regulatory Affairs Manager
5001 West 41st Street
Sioux Falls, SD 57106

and

Interstate Telecommunications Cooperative, Inc.
Jerry Heiberger, General Manager
312 Fourth Street West
P.O. Box 920
Clear Lake, SD 57226

Each Party shall inform the other of any changes in the above addresses.

R. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such

employees, including compliance with social security taxes, withholding taxes and all other regulations governing matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

S. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

T. Referenced Documents

All references to Sections and Appendixes shall be deemed to be references to Sections of, and Appendixes to this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Midcontinent practice, ITC practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements,

addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Midcontinent practice, ITC practice, or publication of industry standards (unless Midcontinent elects otherwise). Should there be any inconsistency between or among publications or standards, the Parties will discuss any inconsistencies and reach agreement.

U. Publicity and Advertising

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or Marks without the prior written approval of the other Party.

V. Amendment

Midcontinent and ITC may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, and the Act, the Parties agree to cooperate promptly, and in good faith, to negotiate and implement any such additions, changes and corrections to this Agreement .

W. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

X. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

Y. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and shall, at all times, be subject to review by the Commission. In the event any such review rejects any portion of this Agreement, renders it inoperable or creates any ambiguity or requirement for further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

Z. Change of Law

The Parties acknowledge that their relationship is subject to the Act, South Dakota Law, the FCC's regulations implementing the Act and the decisions of the FCC, the Commission and the courts interpreting the Act, South Dakota Law and the FCC's regulations. If, subsequent to the effective date of this Agreement, there is any decision, or change in the Act, South Dakota Law or the FCC's rules that renders any provision of this Agreement unlawful (a "Change of Law"), the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification to the Agreement that is consistent with the law then in effect and, to the extent possible, with the intent of this Agreement. The Parties agree that this provision shall be construed narrowly and that no provision of this Agreement shall be deemed unlawful under this section unless such a result is required by a Change of Law.

AA. Compliance

Each party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

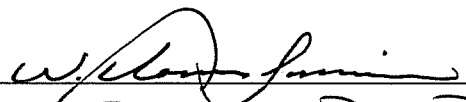
BB. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings,

proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Midcontinent Communications

By 
Its VICE PRESIDENT - PUBLIC POLICY

NOVEMBER 6, 2003
Date

**Interstate
Telecommunications
Cooperative, Inc.**

By 
Its General Manager

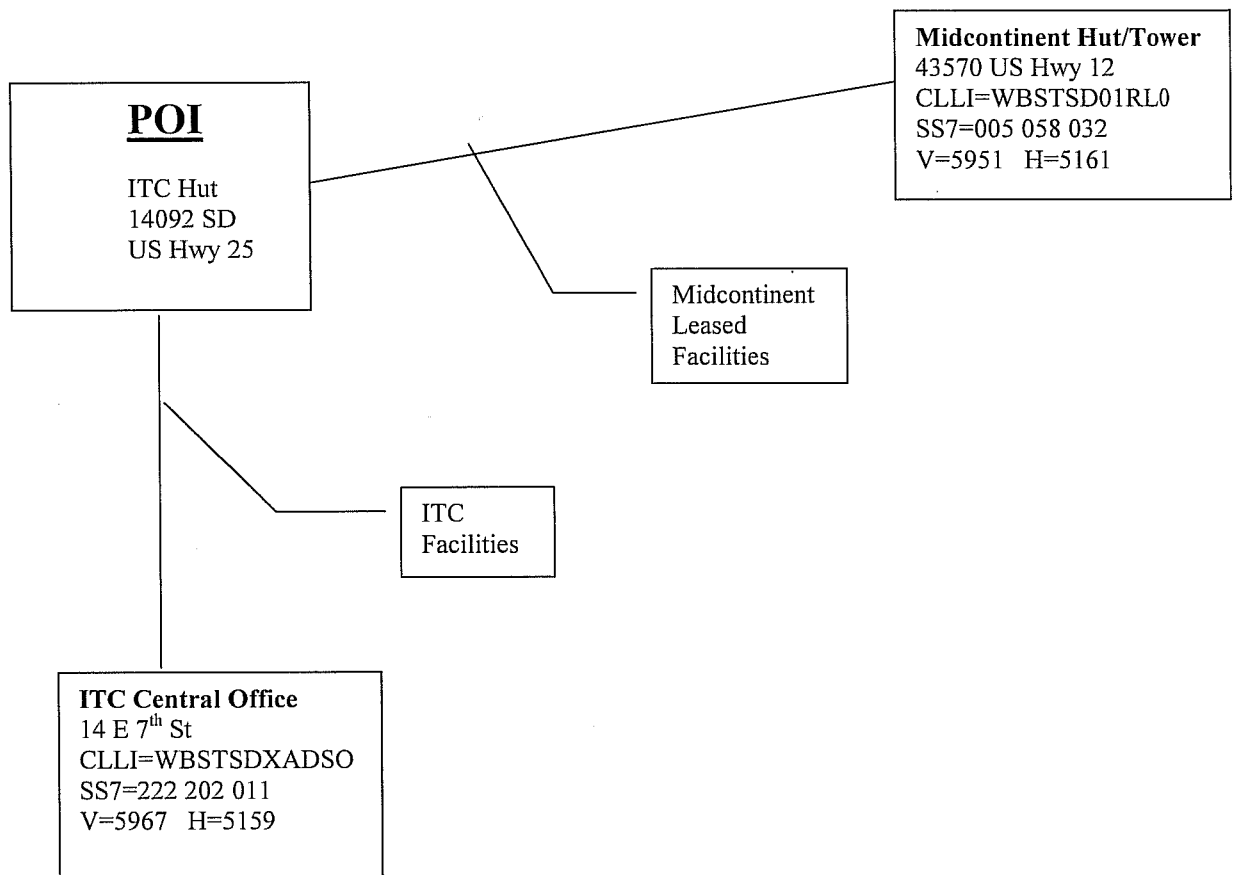
November 3, 2003
Date

Appendix A
Rates and Charges

Reciprocal Transport and Termination Rate for Local Traffic- \$0.03 per
minute

Appendix B

Physical Point Of Interface (POI)



*Separate Trunk Groups for Local Traffic and ISP-bound Traffic will be facilitated.

**Refer to the current August, 2001 agreement for the provision of Floor, Space and Power.

**South Dakota Public Utilities Commission
WEEKLY FILINGS**

For the Period of November 6, 2003 through November 12, 2003

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3201

TELECOMMUNICATIONS

TC03-192 In the Matter of the Filing for Approval of an Interconnection Agreement between Midcontinent Communications and Interstate Telecommunications Cooperative, Inc.

On November 12, 2003, the Commission received a filing for approval of an interconnection agreement between Midcontinent Communications (Midcontinent) and Interstate Telecommunications Cooperative, Inc. (ITC). According to the filing, the Agreement is made in order to set forth the terms, conditions and prices under which the parties agree to provide interconnection and the exchange of local traffic within the "345" Webster, South Dakota exchange. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than December 2, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 11/12/03
Initial Comments Due: 12/02/03

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>**

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR)	ORDER APPROVING
APPROVAL OF AN INTERCONNECTION)	AGREEMENT
AGREEMENT BETWEEN MIDCONTINENT)	
COMMUNICATIONS AND INTERSTATE)	TC03-192
TELECOMMUNICATIONS COOPERATIVE, INC.)	

On November 12, 2003, Midcontinent Communications (Midcontinent) filed for approval by the South Dakota Public Utilities Commission (Commission) an interconnection agreement between Interstate Telecommunications Cooperative, Inc. (Interstate) and Midcontinent.

On November 13, 2003, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until December 2, 2003, to do so. No comments were filed.

At its duly noticed December 16, 2003, meeting, the Commission considered whether to approve the agreement between Midcontinent and Interstate. Commission Staff recommended approval.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and the Federal Telecommunications Act of 1996. In accordance with 47 U.S.C. § 252(e)(2), the Commission found that the agreement does not discriminate against a telecommunications carrier that is not a party to the agreement and the agreement is consistent with the public interest, convenience, and necessity. The Commission unanimously voted to approve the agreement. It is therefore

ORDERED, that the Commission approves the agreement.

Dated at Pierre, South Dakota, this 22nd day of December, 2003.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Heldine Kallo</i></u>
Date: <u>12/23/03</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

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March 10, 2004

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RECEIVED

MAR 10 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

HAND DELIVERED

Pam Bonrud, Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: MIDCONTINENT COMMUNICATIONS; INTERCONNECTION AGREEMENT
WITH ITC
Docket: TC03-192
Our file: 4056

Dear Pam:

Enclosed are original and ten copies of Midcontinent's Motion to Compel Local Number Porting or Good Faith Negotiation in the above-entitled matter. Please file the enclosure. Thank you very much.

With a copy of this letter, I am mailing to Jerry Heiberger, General Manager of Interstate Telecommunications Cooperative, and Ben Dickens, a copy of the enclosure, this being intended as service by mailing upon ITC.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Karen Cremer, Harlan Best, Ben Dickens, Jerry Heiberger, Tom Simmons, Nancy Vogel, Mary Lohnes

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 10 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) TC03-192
APPROVAL OF AN INTERCONNECTION)
AGREEMENT BETWEEN MIDCONTINENT) MOTION TO COMPEL
COMMUNICATIONS AND INTERSTATE) LOCAL NUMBER PORTING OR
TELECOMMUNICATIONS COOPERATIVE INC.) GOOD FAITH NEGOTIATION

COMES NOW Midcontinent Communications ("Midcontinent") and moves the Commission as follows:

1. On December 17, 2003, the Commission entered its Order Granting Petition to Amend Certificate of Authority and Order Granting Waiver in Docket TC03-068, authorizing Midcontinent to provide competitive local exchange service within the City of Webster, and further waiving the application of ARSD 20:10:32:15. In that docket Midcontinent alleged that 47 U.S.C. 251(f)(1)(C) was applicable to the application and as such, the exemption provided by 47 U.S.C. 251(f)(1)(A) did not apply to the incumbent carrier, Interstate Telecommunications Cooperative, Inc., ("ITC").

2. By its Order Approving Agreement in Docket TC03-192, dated December 22, 2003, the Commission approved the Interconnection Agreement between the parties dated November 6, 2003. As to number portability, that agreement provides:

D. NUMBER PORTABILITY

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be

unable to agree to provide number portability or to agree upon terms and conditions for number portability.

3. Notwithstanding repeated requests to negotiate local number porting procedures, ITC has failed and refused to do so. Specifically, the record will show the following:

- December 29, 2003, e-mail from Mary Lohnes to Jerry Heiberger asking for a discussion on number porting. Response from Jerry Heiberger on January 8, 2004, suggesting telephone conference on January 12. On January 12 Jerry Heiberger indicated by telephone that he still needed to do some research, that he would make it a higher priority with his people, and get back in a week or so. He did not respond in a week or so.
- February 24, 2004, inquiry from Mary Lohnes to Jerry Heiberger on status of research on LNP, asking for a meeting. February 25 response from Jerry Heiberger to Mary Lohnes, "I am trying to establish another call with appropriate personnel for this afternoon. I will call once we have the issues finalized." He did not call.
- March 3, 2004, e-mail from Mary Lohnes to Jerry Heiberger: "Are you ready for a meeting to discuss LNP? We will need to discuss how we will exchange information between our companies, paper or electronic. We will also want to discuss the exchange of other customer related information such as directory listing, phone book listings, and intercept messages."
- March 4, 2004, message from Jerry Heiberger to Mary Lohnes: "After two days of board meetings, I have finally returned to my office to update you on the status of the LNP issue. After analyzing the current rules, and both nonrecurring and recurring costs of deploying LNP, ITC has determined it is in its best interest to file a petition for suspension or modification of the LNP rules and requirements before the SD PUC next week. Because I will be out of the

office until midweek, I anticipate the petition will be available late next week at the Commission."

ITC has never negotiated the number portability issue, nor has it provided any information concerning cost or technical problems to Midcontinent.

4. ITC is obligated to provide number portability in accordance with requirements prescribed by the FCC. 47 U.S.C. 251(b)(2). The FCC has issued two orders which are relevant to this motion. While both orders apply to wireline to wireless porting, there is no significant technical difference between the two, and if a LEC is required to accommodate wireless porting, there is no reason wireline to wireline porting could not likewise be accomplished. Logically, avoiding competition can be the only reason an incumbent LEC would wish to discriminate between wireless to wireline porting and wireline to wireline porting.¹

5. Under the interconnection agreement between the parties they agreed to negotiate in good faith terms and conditions for the provision of number portability within six months from the date of the agreement. The agreement was dated November 6, 2003, making the deadline May 6, 2004. ITC has failed and refused to negotiate in good faith, and instead has simply delayed and issued an ultimatum that it will apply for suspension or modification.

6. Given the existence of the FCC's wireless portability orders, one can only conclude that ITC is using this issue as a delaying tactic. At a minimum, good faith negotiations require that the parties exchange information and attempt to work out a satisfactory solution. Here, ITC has stonewalled Midcontinent and has not even attempted to provide a reason why it cannot negotiate and exchange relevant information. At this point, Midcontinent has

¹The two FCC orders that are relevant to this are the November Intermodal Order, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, released November 10, 2003, and the January order, CC Docket No. 95-116, Order, released January 16, 2004. The November order gave carriers outside the top 100 MSAs until May 24 to comply with the wireless number portability requirement (largely on the ground that wireless providers weren't obligated to implement portability in those markets until that date). The January order gave small carriers operated inside the top 100 MSAs the same extension. Because of its location, ITC would appear to be subject to the November order. However, the deadline is the same under both orders.

no information whatsoever concerning the alleged basis for ITC's refusal to go forward with good faith negotiations, whether it be financial or technical.

WHEREFORE Midcontinent moves as follows:

- A. That the Commission establish a procedural schedule including expedited discovery and an expedited hearing date;
- B. That the Commission hold an evidentiary hearing on the issues presented by this motion;
- C. That the Commission order ITC to engage in good faith negotiations to be concluded on or before May 6, 2006; and
- D. That the Commission order ITC to provide wire to wire porting not later than May 24, 2004.

Dated this 10th day of March, 2004.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

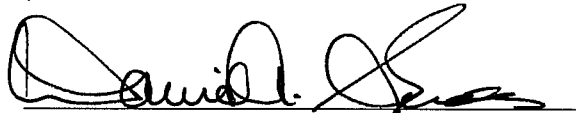
DAVID A. GERDES
Attorneys for Midcontinent
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 10th day of March, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.
P.O. Box 920
312 Fourth Street West
Clear Lake, SD 57226-0920

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, D.C. 20037

A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes

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319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
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ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

March 30, 2004

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

RECEIVED

MAR 30 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Docket Number TC03-192

Dear Ms. Bonrud:

Enclosed herein for filing in the above-named docket are the original and ten copies of Interstate Communications Cooperative, Inc.'s OPPOSITION TO MOTION TO COMPEL.

By copy of this letter, I am also serving David A. Gerdes, attorney for Midcontinent Communications.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: David A. Gerdes (with enclosures)
Benjamin Dickens (with enclosures)
Jerry Heiberger (with enclosures)

RECEIVED

MAR 30 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNEC-
TION AGREEMENT BETWEEN MID-
CONTINENT COMMUNICATIONS
AND INTERSTATE TELECOMMUNI-
CATIONS COOPERATIVE, INC.

Docket No. TC03-192

**OPPOSITION TO
MOTION TO COMPEL**

Interstate Telecommunications Cooperative, Inc. (ITC), by its attorney, hereby opposes the Motion to Compel (Motion) filed by Midcontinent Communications (Midcontinent) in the above-referenced docket. In its Motion, Midcontinent alleges that ITC has failed to negotiate local number porting procedures in good faith as required by the interconnection agreement entered into by the Parties and approved by this Commission on December 22, 2003. Midcontinent asks the Commission to (1) establish a procedural schedule including expedited discovery; (2) hold an evidentiary hearing on the issues presented in the Motion; (3) order ITC to engage in good faith negotiations to be concluded before May 6, 2006; and (4) order ITC to provide porting not later than May 24, 2004. As demonstrated below, ITC is in full compliance with the terms of the interconnection agreement and, therefore, Midcontinent's Motion should be denied.

Midcontinent alleges that ITC has failed and refused to negotiate local number porting procedures "[n]otwithstanding repeated requests"¹ from Midcontinent to do so. ITC disputes Midcontinent's characterization of the situation and asserts that it promptly

¹ Motion at p.2, ¶3.

began investigating the provision of local number portability (LNP) pursuant to the interconnection agreement; that it kept Midcontinent informed of its actions; and that Midcontinent expressed no dissatisfaction with ITC's efforts until ITC informed Midcontinent that it would pursue a suspension of its LNP obligations pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (the Act). Accordingly, it appears that Midcontinent's real dispute is with ITC's decision to seek a suspension of its LNP obligations and Midcontinent's "bad faith" allegations are nothing more than a back-door attempt to circumvent ITC's rights under the Act and the interconnection agreement.

As indicated by Midcontinent, the interconnection agreement entered into by the Parties and approved by the Commission states, with respect to number portability, as follows:²

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability. (emphasis added).

Pursuant to Section 251(f)(2) of the Act, ITC has the right to petition this Commission for suspension or modification of the requirement to provide LNP. It is clear from the interconnection agreement that ITC reserved its right to request suspension or modification of the LNP requirement pursuant to Section 251(f)(2) and further, that it re-

² Section 252(f)(2) states that "[a] local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition."

served the right to do so if it was “unable to agree to provide number portability.” Pursuant to the interconnection agreement, Midcontinent specifically agreed that ITC reserved this right.

After much investigation of the cost and procedures involved with LNP, ITC has chosen to exercise its right under the interconnection agreement and seek suspension of the LNP requirement. The facts demonstrate, however, that ITC proceeded in good faith, as required by the interconnection agreement, in taking this action. Specifically, once the LNP provision was added to the interconnection agreement, even before the agreement was approved by the Commission, ITC began investigating the cost and implementation of LNP. ITC’s investigation began no later than November 20, 2003 and continued through February 2004. As indicated by the LNP Timeline and Affidavit of Jerry Heiberger, and the electronic mail messages attached hereto as Exhibits 1-7, ITC kept Midcontinent informed of its actions with respect to LNP and responded to all of Midcontinent’s requests concerning LNP. Further, the messages give no indication that Midcontinent viewed ITC’s responses as unacceptable or not in good faith.

To complete and correct the record, ITC provides the following additional information. First, in addition to the January 12, 2004, call from Jerry Heiberger of ITC to Mary Lohnes of Midcontinent referenced in Midcontinent’s Motion, Mr. Heiberger also contacted Ms. Lohnes via voice mail message on January 28, 2004, and informed her that the costs of deploying LNP would be presented to the ITC Board of Directors at the upcoming Board meeting, which occurred on February 3, 2004. Second, Midcontinent states that ITC did not call as promised in a February 25, 2004, electronic mail message from Jerry Heiberger of ITC to Mary Lohnes of Midcontinent. (See Exhibit 5) Mr.

Heiberger, however, did respond to Ms. Lohnes, a mere six working days later, when he informed her via electronic mail message and letter sent by facsimile that ITC would be filing a suspension petition at the Commission. (See Exhibits 1 and 7)

Thus, it is clear that ITC promptly began investigating the cost and procedures for providing LNP once the LNP provision was added to the interconnection agreement; ITC kept Midcontinent informed of its actions and responded to all of Midcontinent's requests; and that Midcontinent expressed no dissatisfaction with ITC's efforts until ITC informed Midcontinent that it would exercise its right under the interconnection agreement to request a suspension of its LNP requirements with this Commission. Accordingly, ITC proceeded in "good faith" in accordance with the interconnection agreement.

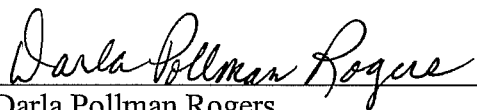
In addition, the relief requested by Midcontinent is unnecessary and would be a waste of this Commission's and the Parties resources in light of the pending Petition for Suspension of Local Number Porting Obligations (LNP Suspension Petition) filed by ITC with this Commission on March 12, 2004. In its Motion, Midcontinent asks the Commission to establish a procedural schedule and hold an evidentiary hearing on the issues presented in its Motion and order ITC to engage in good faith negotiations to be concluded by May 6, 2006. Midcontinent also asks the Commission to order ITC to provide LNP not later than May 24, 2004. This final request is an inappropriate attempt on the part of Midcontinent to have the Commission prejudge the ITC LNP Suspension Petition and should be denied. The Commission should also deny Midcontinent's request to order ITC to engage in good faith negotiations for the provision of LNP because it too prejudices the resolution of the LNP Suspension Petition. At a minimum, this request should not be entertained until after the Commission issues a final order on the LNP Suspension

Petition, which will determine whether and when ITC must provide LNP and, therefore, is critical to a determination as to whether LNP negotiations are necessary.

Finally, ITC urges the Commission to deny Midcontinent's procedural requests for a procedural schedule, including expedited discovery and an expedited hearing on the issues presented by the Motion. As an initial matter, the evidence presented in this Opposition and in Midcontinent's Motion demonstrates that there is no merit to Midcontinent's allegations and, based on this evidence, the Commission should deny the Motion on the merits. If, however, the Commission is unwilling to do so, then these issues also should be deferred until the Commission issues a final order on the LNP Suspension Petition since this will determine whether there is any need for the Parties to expend further time and money negotiating the provision of LNP.

Based on the foregoing, ITC respectfully requests that the Commission deny Midcontinent's Motion, and its requests for relief, in its entirety.

DATED this thirtieth day of March, 2004.



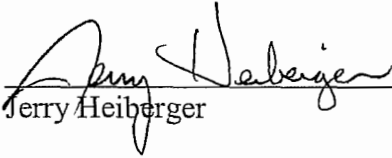
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Attorney for ITC

LNP Timeline

- 11/20/03 ITC begins investigating the cost and procedures for providing LNP
- 12/29/03 E-mail message from M. Lohnes regarding LNP
- 1/8/04 J. Heiberger responds to 12/29/03 message from M. Lohnes
- 1/12/04 Conference call with J. Heiberger and M. Lohnes regarding LNP
- 1/28/04 J. Heiberger leaves voice mail message for M. Lohnes regarding the costs of deploying LNP and informing her that the cost of deploying LNP will be presented to the ITC Board of Directors at the upcoming Board meeting.
- 2/24/04 E-mail message from M. Lohnes regarding LNP
- 2/25/04 J. Heiberger responds to 2/24/04 message from M. Lohnes
- 3/3/04 E-mail message from M. Lohnes regarding LNP
- 3/4/04 J. Heiberger responds to 3/3/04 message from M. Lohnes via electronic mail and letter sent via facsimile which state that ITC will file a petition for suspension of the LNP requirement.

AFFIDAVIT


I, Jerry Heiberger, General Manager of Interstate Telecommunications Cooperative, Inc., affirm under penalty of perjury that the information contained in Exhibit 1, entitled "LNP Timeline" is true and correct.



Jerry Heiberger

March, 29, 2004
Date

Subscribed and sworn to before me this 29th day of March, 2004.



Notary Public

MY COMMISSION EXPIRES JANUARY 10, 2009



Jerry

From: Mary Lohnes [mary_lohnes@mimi.net]
Sent: Monday, December 29, 2003 3:16 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

We need to keep the discussion on number porting going, is there a day and time next week that would work for you?

Happy New Year!
Mary

Jerry

From: Jerry Heiberger [jerryhei@itctel.com]
Sent: Thursday, January 08, 2004 4:26 PM
To: 'Mary Lohnes'
Subject: RE: LNP

Mary,

I have been gone for the holidays and am trying to get caught up with board of director issues the past few days. Will you be available on Monday, January 4th. I will plan to call you sometime mid morning if this works for your schedule.

Thanks,

Jerry

-----Original Message-----

From: Mary Lohnes [mailto:mary_lohnes@mmi.net]
Sent: Monday, December 29, 2003 3:16 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

We need to keep the discussion on number porting going, is there a day and time next week that would work for you?

Happy New Year!
Mary

Jerry

From: Mary Lohnes [mary_lohnes@mimi.net]
Sent: Tuesday, February 24, 2004 2:23 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

Where are you at with your research on LNP? Are you soon at a point where we should have a meeting to discuss the process?

Thanks!
Mary

Jerry

From: Jerry Heiberger [jerryhei@itctel.com]
Sent: Wednesday, February 25, 2004 8:35 AM
To: 'Mary Lohnes'
Subject: RE: LNP

Good Morning Mary,

I am trying to establish another call with appropriate personnel for this afternoon. I will call once we have the issues finalized.

Jerry

-----Original Message-----

From: Mary Lohnes [mailto:mary_lohnes@mimi.net]
Sent: Tuesday, February 24, 2004 2:23 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

Where are you at with your research on LNP? Are you soon at a point where we should have a meeting to discuss the process?

Thanks!
Mary

Jerry

From: Mary Lohnes [mary_lohnes@mmi.net]
Sent: Wednesday, March 03, 2004 3:40 PM
To: 'Jerry Heiberger'
Cc: Nancy Vogel
Subject: RE: LNP

Good Afternoon Jerry,

Are you ready for a meeting to discuss LNP? We will need to discuss how we will exchange information between our companies, paper or electronic. We will also want to discuss the exchange of other customer related information such as directory listing, phone book listings, and intercept messages.

Thanks!
Mary

-----Original Message-----

From: Jerry Heiberger [mailto:jerryhei@itctel.com]
Sent: Wednesday, February 25, 2004 8:35 AM
To: 'Mary Lohnes'
Subject: RE: LNP

Good Morning Mary,

I am trying to establish another call with appropriate personnel for this afternoon. I will call once we have the issues finalized.

Jerry

-----Original Message-----

From: Mary Lohnes [mailto:mary_lohnes@mmi.net]
Sent: Tuesday, February 24, 2004 2:23 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

Where are you at with your research on LNP? Are you soon at a point where we should have a meeting to discuss the process?

Thanks!
Mary

Jerry

From: Jerry Heiberger [jerryhei@itctel.com]
Sent: Thursday, March 04, 2004 11:18 AM
To: 'Mary Lohnes'
Subject: RE: LNP

Good Morning Mary,

After two days of board meetings, I have finally returned to my office to update you on the status of the LNP issue. After analyzing the current rules, and both nonrecurring and recurring cost of deploying LNP, ITC has determined it is in its best interest to file a petition for suspension or modification of the LNP rules and requirements before the SD PUC next week. Because I will be out of the office until mid-week, I anticipate the petition will be available late next week at the commission.

Jerry

-----Original Message-----

From: Mary Lohnes [mailto:mary_lohnes@mmi.net]
Sent: Wednesday, March 03, 2004 3:40 PM
To: 'Jerry Heiberger'
Cc: Nancy Vogel
Subject: RE: LNP

Good Afternoon Jerry,

Are you ready for a meeting to discuss LNP? We will need to discuss how we will exchange information between our companies, paper or electronic. We will also want to discuss the exchange of other customer related information such as directory listing, phone book listings, and intercept messages.

Thanks!
Mary

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To: 'Mary Lohnes'
Subject: RE: LNP

Good Morning Mary,

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Jerry

-----Original Message-----

From: Mary Lohnes [mailto:mary_lohnes@mmi.net]
Sent: Tuesday, February 24, 2004 2:23 PM
To: Jerry Heiberger (E-mail)
Subject: LNP

Good Afternoon Jerry,

Where are you at with your research on LNP? Are you soon at a point where we should have a meeting to discuss the process?

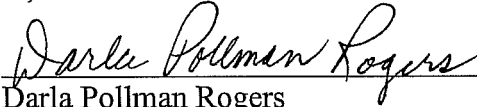
Thanks!
Mary

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing OPPOSITION TO MOTION TO COMPEL upon the person herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to said addressee, to-wit:

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON LLP
P. O. Box 160
Pierre, South Dakota 57501

Dated this thirtieth day of March, 2004.



Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Attorney for ITC

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR))	ORDER FOR AND NOTICE
APPROVAL OF AN INTERCONNECTION))	OF PROCEDURAL
AGREEMENT BETWEEN MIDCONTINENT))	SCHEDULE AND HEARING
COMMUNICATIONS AND INTERSTATE))	
TELECOMMUNICATIONS COOPERATIVE, INC.))	TC03-192

On November 12, 2003, Midcontinent Communications (Midcontinent) filed for approval by the South Dakota Public Utilities Commission (Commission) an interconnection agreement between Interstate Telecommunications Cooperative, Inc. (ITC) and Midcontinent. On December 22, 2003, the Commission issued an order approving the interconnection agreement in accordance with 47 U.S.C. Section 252. On March 10, 2004, Midcontinent filed a Motion to Compel Local Number Porting or Good Faith Negotiation requesting the Commission to establish a procedural schedule, schedule an evidentiary hearing, order ITC to engage in good faith negotiations to be concluded on or before May 6, 2004, and order ITC to provide wire to wire porting not later than May 24, 2004. On March 30, 2004, ITC filed an Opposition to Motion to Compel. The Commission considered the scheduling issues at its regular meeting on April 6, 2004, and voted unanimously to establish a procedural schedule and to schedule the matter for hearing on June 21, 2004.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, including 49-31-3, 49-31-80 and 49-31-81 and Sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. Sections 251 and 252 and ARSD 20:10:32:39.

Procedural Schedule

The due dates for pre-filing of testimony are as follows (all dates 2004):

- May 14 Midcontinent's direct testimony and exhibits
- May 28 ITC's and Staff's reply testimony and exhibits
- June 14 Midcontinent's rebuttal testimony and exhibits

The schedule for discovery is as follows (all dates 2004):

- April 28 General interrogatories, document requests and other general discovery requests by all parties
- May 11 Responses to general discovery requests by all parties
- May 18 Supplemental discovery requests by ITC and Staff following Midcontinent's pre-filed testimony
- May 24 Midcontinent's responses to supplemental discovery requests
- June 3 Supplemental discovery requests by Midcontinent following ITC's and Staff's pre-filed testimony
- June 10 ITC's and Staff's responses to Midcontinent's supplemental discovery requests

Notice of Hearing

A hearing will be held on this matter beginning at 10:00 A.M. on June 21, 2004, and continuing, if necessary, at 9:00 A.M. on June 22 - 25, 2004, in the Second Floor Conference Room of the Soldiers and Sailors War Memorial Building (across Capitol Avenue from the Capitol Building), Pierre, South Dakota

The issue at the hearing will be whether the Commission shall issue an order requiring ITC to engage in good faith negotiations regarding local number porting to Midcontinent and/or an order requiring ITC to provide wire to wire number porting to Midcontinent.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision may be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may either grant or deny the request of Midcontinent for an order requiring ITC to engage in good faith negotiations regarding number porting to Midcontinent and/or an order requiring ITC to provide wire to wire number porting to Midcontinent. The Commission's Final Decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that the parties shall comply with the procedural schedule and discovery schedule set forth above; and it is

FURTHER ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether Midcontinent's request for an order requiring ITC to engage in good faith negotiations regarding number porting to Midcontinent and/or an order requiring ITC to provide wire to wire number porting to Midcontinent should be granted.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of May, 2004.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Alvin Kalbo</u>
Date:	<u>5/5/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

LAW OFFICES
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BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

May 14, 2004

OF COUNSEL
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KARL GOLDSMITH 1885-1966

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HAND DELIVERED

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MAY 14 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: **MIDCONTINENT COMMUNICATIONS; INTERCONNECTION AGREEMENT
WITH ITC**

Docket: TC03-192

Our file: 4056

Dear Pam:

Enclosed are original and ten copies of the prefiled testimony of Mary Lohnes and Tom Simmons in this docket. Please file the enclosures.

With a copy of this letter, I am sending copies of this testimony to the service list. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List

cc: Tom Simmons

Nancy Vogel

Mary Lohnes

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DIRECT TESTIMONY
OF
MARY LOHNES
ON BEHALF OF
MIDCONTINENT COMMUNICATIONS
MOTION TO COMPEL LOCAL NUMBER PORTING
OR GOOD FAITH NEGOTIATION
Docket TC03-192

RECEIVED
MAY 14 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

May 7, 2004

1 **INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME FOR THE RECORD:**

4 A. Mary Lohnes

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Midcontinent Communications as Regulatory Affairs Manager.

7 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EMPLOYEMENT EXPERIENCE.**

9 A. I hold a B.S. in Organizational Behavior and Management from Sioux Falls College, Sioux
10 Falls, SD. My employment with Midcontinent began in June of 1991 in sales support and in
11 1993 was promoted to Product Manager of Long Distance. With the passage of the 1996
12 Telecommunications Act, I was part of the team that negotiated an agreement with Qwest
13 (then USWest) to provide local exchange services in South Dakota. I managed the team that
14 submitted orders and worked trouble calls. The fall of 1999 I managed the telephone
15 customer service department and handled regulatory affairs responsibilities. In 2000 I
16 became the Regulatory Affairs Manager.

17 **II. TESTIMONY**

18 **Q. WHAT ISSUES DOES THIS TESTIMONY ADDRESS?**

19 A. I will show that, as part of the Interconnection Agreement signed by Interstate
20 Telecommunications Cooperative and Midcontinent Communications, Local Number
21 Portability was negotiated and that the agreed upon negotiation never took place.

22 **Q. DESCRIBE WHAT TOOK PLACE.**

23 A. Midcontinent Communications made a financial decision and commitment to bring
24 competitive local exchange service to the community of Webster. On April 17, 2003,
25 Midcontinent made application with the SD PUC to expand its Certificate of Authority to
26 include the service territory of Webster, serviced by Interstate Telecommunications

1 Cooperative. At that same time, Midcontinent sent notice to ITC of the application to the
2 PUC and a request for interconnection in the Webster exchange and to have a meeting within
3 two weeks of the notice. That meeting took place on May 1, 2003 where a broad discussion
4 was held on what services Midcontinent planned to provide, which included LNP.

5 The companies entered into negotiation on the interconnection agreement and after much
6 discussion, the companies agreed that "The parties will negotiate in good faith the provision
7 of number portability on a reciprocal basis under terms and conditions to be negotiated and
8 added to this agreement by amendment, within six months from the date of this agreement."

9 The agreement was signed by ITC on November 3, 2003, and by Midcontinent on November
10 6, 2003. The SD PUC Commission approved the agreement on December 17, 2003.

11 On December 29, 2003, I sent an email message to Mr. Jerry Heiberger, general manager of
12 ITC, requesting a date for the following week to discuss number porting. **Exhibit 1.**

13 Mr. Heiberger responded on January 8, 2004 stating that he had been busy with meetings and
14 requested a meeting on Monday January 4th. I responded back that I assumed he meant
15 January 12th and that Midcontinent would be available the morning of the 12th. **Exhibit 2.**

16 On January 12th, Mr. Heiberger called me stating that he still needed more time for research
17 with his team to look into number portability. They needed to know specific details relating
18 to details of execution and costs. He further stated that he would make it a higher priority
19 with this people and get back in a week or so. I agreed to another short delay. **Exhibit 3.**

20 On January 28, 2004, Mr. Heiberger left me a voice mail message that he wanted to give me
21 an update on the LNP issue. **Exhibit 4.**

22 On January 29, 2004, I returned Mr. Heiberger's call. We discussed a switch issue and he
23 informed me of a board meeting coming up where LNP issues would be discussed. **Exhibit 5.**

24 On February 24, 2004, I sent an email to Mr. Heiberger asking for an update on his research
25 progress, and requested a meeting. **Exhibit 6.**

1 On February 25, 2004, Mr. Heiberger responded that he was trying to establish another call
2 with the appropriate personnel for that afternoon and would call once they have the issues
3 finalized. **Exhibit 7.**

4 On March 3, 2004, I sent Mr. Heiberger another email requesting a meeting. **Exhibit 8.**

5 On March 4, 2004, Mr. Heiberger responded that ITC has determined to file a petition for
6 suspension or modification of the LNP rules and requirements with the SD PUC. **Exhibit 9.**

7 **Q. ITC HAS CONTENDED THAT IT WAS NOT CLEAR THAT MIDCONTINENT**
8 **WAS INTENT ON SCHEDULING A MEETING. WHAT IS YOUR RESPONSE?**

9 A. I had to initiate virtually all contacts in an effort to get the matter moving. I was under the
10 distinct impression that Mr. Heiberger simply was delaying the process, and the context of his
11 responses corroborates that conclusion. For example, the January 29th conversation
12 referenced a board meeting at which LNP would be discussed, yet by February 24th Mr.
13 Heiberger still had not contacted me, nor did he ever mention what happened at the board
14 meeting.

15 **Q. WHY IS LNP IMPORTANT TO MIDCONTINENT IN THE WEBSTER**
16 **EXCHANGE?**

17 A. Midcontinent cannot effectively compete against ITC without LNP. Customers tend to want
18 to keep their telephone numbers. Remember, Midcontinent's entry into the Webster
19 exchange is a competitive entry. ITC is offering cable service in competition to
20 Midcontinent's long standing presence in the market, since 1974. Midcontinent believes ITC,
21 as the incumbent carrier, is clearly violating both the spirit and the letter of the 1996 Act in
22 impeding competition in this manner.

1 **III. SUMMARY**

2 **PLEASE SUMMARIZE YOUR TESTIMONY.**

3 The time line of attempted negotiations on the part of Midcontinent clearly demonstrates the
4 ample amount of notice and time for ITC to determine the method to provide LNP. The messages
5 clearly demonstrate Midcontinent's desire and patience to negotiate terms discussed in the PUC
6 approved Interconnection Agreement. The messages also clearly demonstrate a lack of interest
7 on the part of ITC to negotiate in good faith the provision of number portability as agreed to in
8 our Interconnection Agreement. Their decision to file a petition with the Commission for
9 suspension under the Wireless Porting Order leads us to question whether they ever intended to
10 negotiate in good faith, or simply view their petition for suspension as a way of relief from their
11 previous commitment. In either case, ITC's agreement to negotiate in good faith for Wireline
12 LNP should be upheld.

13 **DOES THIS CONCLUDE YOUR TESTIMONY?**

14 Yes, it does.

1 **Exhibit 1**

2
3 **From:** Mary Lohnes
4 **Sent:** Monday, December 29, 2003 3:16 PM
5 **To:** Jerry Heiberger (E-mail)
6 **Subject:** LNP

7 Good Afternoon Jerry,

8
9 We need to keep the discussion on number porting going, is there a day and time
10 next week that would work for you?

11
12 Happy New Year!

13 Mary
14
15
16

17 **Exhibit 2**

18 From: Jerry Heiberger [jerryhei@itctel.com]
19 Sent: Thursday, January 08, 2004 4:26 PM
20 To: 'Mary Lohnes'
21 Subject: RE: LNP

22
23 Mary,

24
25 I have been gone for the holidays and am trying to get caught up with
26 board
27 of director issues the past few days. Will you be available on Monday,
28 January 4th. I will plan to call you sometime mid morning if this works
29 for
30 your schedule.

31
32 Thanks,

33
34 Jerry
35

36 **Exhibit 3**

37 ITC – LNP

38 Below are phone calls and/or voice mail message notes which are in addition to email messages:

39
40 Jerry had sent an email on January 8, 2004, in response to my email request for a
41 meeting. Jerry suggested a meeting on Monday, January 4th. I replied on January 9th that
42 I assumed he meant Monday, January 12th.

43 I received a phone call from Jerry on January 12th. Jerry said that he still needed to do
44 some research with his team to look into it. They needed to know what it all will take to
45 get it done and the costs. Jerry said he would make it a higher priority with this people
46 and get back in a week or so
47

1 **Exhibit 4**

2
3 ITC – LNP

4 Below are phone calls and/or voice mail message notes which are in addition to email messages:
5 On January 28, 2004, Jerry Heiberger left me a voice mail message that he had an update on the
6 LNP issue to give me.

7
8 **Exhibit 5**

9
10 ITC – LNP

11 Below are phone calls and/or voice mail message notes which are in addition to email messages:
12 January 29, 2004, I returned Jerry's call. I advised Jerry that our technical team had been
13 trying to test the connectivity but had been running into some problems. We are being
14 asked to turn up "00" for continuity test. We would like ITC to leave the circuits up so
15 we can test on our own schedule and will then advise them of test completion. Jerry was
16 unaware of any problems and did not know what "00" meant. Jerry would have their
17 technical manager call Midcontinent's technical manager.

18
19 Still working on LNP.

20
21 **Exhibit 6**

22
23 **From:** Mary Lohnes
24 **Sent:** Tuesday, February 24, 2004 2:23 PM
25 **To:** Jerry Heiberger (E-mail)
26 **Subject:** LNP

27 Good Afternoon Jerry,

28
29 Where are you at with your research on LNP? Are you soon at a point where we
30 should have a meeting to discuss the process?

31
32 Thanks!
33 Mary

34
35
36 **Exhibit 7**

37
38 From: Jerry Heiberger [jerryhei@itctel.com]
39 Sent: Wednesday, February 25, 2004 8:35 AM
40 To: 'Mary Lohnes'
41 Subject: RE: LNP

42
43 Good Morning Mary,

44
45
46 I am trying to establish another call with appropriate personnel for
47 this
48 afternoon. I will call once we have the issues finalized.

49
50 Jerry

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Exhibit 8

From: Mary Lohnes
Sent: Wednesday, March 03, 2004 3:40 PM
To: 'Jerry Heiberger'
Cc: Nancy Vogel
Subject: RE: LNP

Good Afternoon Jerry,

Are you ready for a meeting to discuss LNP? We will need to discuss how we will exchange information between our companies, paper or electronic. We will also want to discuss the exchange of other customer related information such as directory listing, phone book listings, and intercept messages.

Thanks!
Mary

Exhibit 9

From: Jerry Heiberger [jerryhei@itctel.com]
Sent: Thursday, March 04, 2004 12:44 PM
To: mary_lohnes@mimi.net
Subject: LNP

Our e-mail server is back up so I thought I would try to send you this message again via e-mail.

Jerry

Good Morning Mary,

After two days of board meetings, I have finally returned to my office to update you on the status of the LNP issue. After analyzing the current rules, and both nonrecurring and recurring cost of deploying LNP, ITC has determined it is in its best interest to file a petition for suspension or modification of the LNP rules and requirements before the SD PUC next week.

Because I will be out of the office until mid-week, I anticipate the petition will be available late next week at the commission.

Jerry

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DIRECT TESTIMONY
OF
W. TOM SIMMONS
ON BEHALF OF
MIDCONTINENT COMMUNICATIONS
MOTION TO COMPEL LOCAL NUMBER PORTING
OR GOOD FAITH NEGOTIATION

Docket TC03-192

May 13, 2004

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

1 INTRODUCTION

2

3 **Q. PLEASE STATE YOUR NAME FOR THE RECORD:**

4 A. W. Thomas Simmons

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Midcontinent Communications as the Vice President of Public
7 Policy.

8 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

9 A. I am the corporate officer responsible for regulatory, government and community
10 affairs, public and media relations, and represent our telephone, cable and Internet
11 product teams on policy issues.

12 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?**

13 A. I hold a Bachelor and Masters degrees in Psychology and have been a Midcontinent
14 Vice President since 1989. My first Midcontinent assignment was with the broadcast
15 division as a general manager of four South Dakota radio stations. In 1995, I joined
16 the telecommunications division, Midco Communications, as their general manager.
17 From 1995 to 2001, I led the team that developed our local exchange operation and
18 developed the commercial and network services group.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

20 A. Yes. I have participated in numerous issues and meetings, formally filing testimony
21 "In the Matter of the Establishment of Switched Access rates for US West
22 Communications, Inc", Docket TC 96-107, "In the Matter of the Analysis of Qwest
23 Corporation's Compliance With Section 271c of the Telecommunications Act of 1996",

1 Docket TC 01-165, and “In the Matter of the Application of Qwest Corporation to
2 Reclassify Local Exchange Services as Fully Competitive”, Docket TC 03-057.

3 **WHAT ISSUES DOES THIS TESTIMONY ADDRESS?**

4 A. The importance of Local Number Portability and provision alternatives.

5 **WHAT IS THE IMPORTANCE OF LOCAL NUMBER PORTABILITY?**

6 Q. One of the most significant barriers to competition is the inability of customers to
7 switch from one telephone provider to another and retain the same number, which is
8 why Congress directed telephone providers in the Telecommunications Act of 1996
9 to provide Local Number Portability. Recognizing that there would be initial
10 complications in developing number portability, the “96 Act” addressed specific
11 options.

12 **ARE THERE OPTIONS AVAILABLE FOR DELIVERING FOR PORTING**
13 **LOCAL NUMBERS?**

14 Q. The options are Long Term or Permanent Number Portability and Interim Number
15 Portability.

16 **WHAT ARE THE DIFFERENCES BETWEEN THESE METHODS?**

17 Q. Long term Number portability is generally defined as the ability of the end user to
18 permanently retain, at the same location, existing telephone numbers without
19 impairment of quality reliability or convenience when changing from one service
20 provider to another. End users can easily choose providers within a rate center and
21 keep their number. Under long term number portability, proper call routing is
22 accomplished by “dipping” into the LNP database to obtain the local routing number
23 (LRN), and the call is routed directly to the switch of the customers chosen provider.

1 Interim Number Portability is most commonly provisioned using the remote call
2 forwarding method (RCF) which requires the customer's directory number to be
3 retained in the original providers switch and a second "shadow" number to be
4 assigned in the requestor's switch.

5 **Q. WHAT ARE THE SIGNIFICANT CHARACTERISTICS OF THESE**
6 **DIFFERING METHODS?**

7 A. Long Term or Permanent Number Portability is the best solution. After a customer
8 has made the choice to change service providers, calls are routed is as directly as
9 they were with the previous provider. It's as if the customer had been initially set
10 up with the provider of choice. There are, however, significant costs in initially
11 setting up permanent portability. Interim Number Portability is relatively
12 inexpensive to establish. The major drawbacks may include feature limitations
13 which may impact proper caller ID transmission for a call originating from a
14 shadow number. An RCF call requires a line from the original provider and a line
15 from the new provider to remain seized for the duration of a call.

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

17 A. The Telecommunications Act of 1996 was enacted to establish a national
18 framework to promote competition and reduce unnecessary regulation. Congress
19 recognized that bringing competition to local phone markets would speed high
20 quality services, advanced services, and competitive prices to customers by
21 offering them choices. Competition is all about choice. In reality, what choice do
22 customers have if they are held captive to a company that "owns" their telephone
23 number. I offer the information on Interim Number Portability as a cost effective,

1 albeit temporary option until real impact can be measured and properly sized.
2 While I can't counter with specific details, the cost estimates of permanent number
3 portability offered by the petitioner strike me as extraordinarily high. Perhaps
4 after a reasonable period of time and experience in offering local number
5 portability the cost of equipment and back office work flow can be more accurately
6 predicted.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. It does.

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MAY 28 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL:
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May 28, 2004

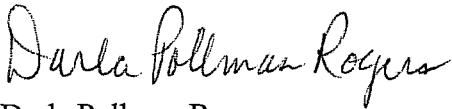
Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

Re: Docket Number TC04-192

Dear Pam:

Enclosed are an original and ten copies of the PRE-FILED TESTIMONY OF JERRY HEIBERGER in the above named docket.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Jerry Heiberger
Mary Sisak
Dave Gerdes

RECEIVED

MAY 28 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNEC-
TION AGREEMENT BETWEEN MID-
CONTINENT COMMUNICATIONS
AND INTERSTATE TELECOMMUNI-
CATIONS COOPERATIVE, INC.

Docket No. TC03-192

DIRECT PRE-FILED TESTIMONY OF

JERRY HEIBERGER

5/28/2004

1 **Q. Please state your name, title, business address, and telephone number for the**
2 **record.**

3 A. My name is Jerald (Jerry) J. Heiberger. I am the General Manager for Interstate
4 Telecommunications Cooperative, Inc., located at 312 4th St. West, Clear Lake, South
5 Dakota, 57226. My telephone number is (605) 874-2181.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Interstate Telecommunications Cooperative, Inc. (ITC)
8 headquartered in Clear Lake, SD.

9 **Q. Please briefly describe your employment duties.**

10 A. As the General Manager of ITC and its two wholly owned subsidiary companies,
11 Interstate Satellite Services, Inc. and ITC Rural Economic Development Inc., I am
12 responsible for managing all activities of the cooperative and its subsidiaries directly
13 or through subordinate managers. I report to an eleven person board of directors. I
14 interpret and implement board policies. I plan, direct, coordinate and control all lines
15 of the business with the assistance of my manager and supervisory personnel. I
16 determine the objectives, establish operating procedures and ensure the success of
17 companies within the guidelines and authority established by the board of directors. I
18 ensure that all operations comply with applicable federal, state and local regulations. I
19 am the primary representative of ITC before regulatory agencies, legislative bodies
20 and industry associations. I evaluate new business opportunities and prepare
21 recommendations to the board based on my analysis.

1 **Q. As part of your duties as General Manager, were you involved with negotiating**
2 **the Interconnections Agreement, including the issue of Local Number Portability**
3 **(LNP) with Midcontinent Communications (Midcontinent)?**

4 A. Yes. I directly negotiated with Midcontinent on these issues.

5 **Q. What issues does your testimony address?**

6 A. I will show that ITC never agreed to provide LNP to Midcontinent and that ITC
7 specifically reserved the right to pursue its legal options, including filing a petition for
8 suspension or modification pursuant to Section 251(f) (2). Further, I will show that
9 Midcontinent knew that ITC may not provide LNP and agreed to this in the
10 Interconnection Agreement. Finally, I will show that ITC proceeded in good faith to
11 examine the cost and other issues concerning LNP; kept Midcontinent informed of its
12 progress; and that Midcontinent never expressed any dissatisfaction with ITC's
13 efforts until ITC informed Midcontinent that it would file a petition for suspension or
14 modification of LNP before the South Dakota Public Utilities Commission.

15 **Q. When did Midcontinent request interconnection from ITC?**

16 A. Midcontinent served ITC with a copy of its request for interconnection in the Webster
17 exchange on April 18, 2003. The document included a request that ITC and
18 Midcontinent personnel meet within two weeks to establish a schedule and
19 framework for negotiations to develop an Interconnection Agreement. On May 1,
20 2003, two weeks after the application was filed with the South Dakota Public Utilities
21 Commission, Midcontinent and ITC met to discuss its request.

22

1 **Q. In her testimony, Ms. Lohnes states that during the May 1, 2003 meeting, “A**
2 **broad discussions was held on what services Midcontinent planned to provide,**
3 **which included LNP.” Is this your recollections of events?**

4 A. No. With respect to Ms. Lohnes’ statement concerning the discussion of LNP, my
5 recollection is that during this meeting, Midcontinent stated that they would be
6 applying for their own NXX and that they may request LNP from ITC.

7 **Q. When did Midcontinent raise the issue of LNP again?**

8 A. Midcontinent did not raise the issue of LNP again until early September 2003. By
9 this time, the parties had reached agreement on most provisions in the Interconnection
10 Agreement.

11 **Q. Describe what took place during the negotiation of the Interconnection**
12 **Agreement with respect to LNP.**

13 A. On September 15, 2003, Midcontinent proposed the addition of a provision to the
14 agreement to address LNP. The provision proposed by Midcontinent stated that the
15 “Parties shall provide Number Portability” and further stated that the “Parties will
16 follow the LNP (Long-term Number Portability) provisioning process recommended
17 by the North American Numbering Council (NANC) and adopted by the FCC.” A
18 copy of the full text of Midcontinent’s proposal is attached as Exhibit 1 to my
19 testimony. This language makes it clear that if ITC had accepted Midcontinent’s
20 proposal it would be agreeing to provide LNP. It further makes it clear that
21 Midcontinent was requesting long-term number portability and not interim number
22 portability.

23

1 **Q. Did ITC agree to this proposal?**

2 A. No. ITC did not accept this proposed language.

3 **Q. What happened next?**

4 A. Midcontinent proposed a revised provision, attached hereto as Exhibit 2. This
5 provision still stated that the parties “shall” provide number portability. It also
6 contained a reservation of rights for Midcontinent “should the parties be unable to
7 agree upon terms and conditions for number portability...”

8 **Q. Did ITC agree to this proposal?**

9 A. No.

10 **Q. Then what happened?**

11 A. ITC suggested a number of changes to Midcontinent’s language. ITC deleted the
12 language that stated ITC shall provide number portability and inserted language to
13 make it clear that ITC was not agreeing to provide number portability. Specifically,
14 ITC inserted language stating that “[t]o the extent that [number portability] is
15 provided” it would be provided in accordance with the rules and regulations
16 prescribed by the FCC and the South Dakota Public Utilities Commission. Further,
17 ITC reserved its rights under the Act and South Dakota law, which rights “may be
18 asserted *should the parties be unable to agree to provide number*
19 *portability...*”(emphasis added). The full text of this proposal is attached as Exhibit
20 3.

21 **Q. Did Midcontinent agree to this proposal?**

1 A. No. Midcontinent submitted an alternate first sentence to the proposed language
2 which stated that the parties would negotiate in good faith “to achieve” number
3 portability. A copy of the text of this proposal is attached as Exhibit 4.

4 **Q. Did ITC agree to this proposal?**

5 A. No. ITC struck the words “to achieve” from the first sentence to eliminate any
6 language that would indicate that ITC was agreeing to provide number portability. A
7 copy of the text of this proposal is attached as Exhibit 5.

8 **Q. Did Midcontinent agree to this change?**

9 A. Yes.

10 **Q. In her testimony, Ms. Lohnes states that the Interconnection Agreement was**
11 **signed by ITC on November 3, 2003; that it was signed by Midcontinent on**
12 **November 6, 2003; and that it was approved by the Commission on December**
13 **17, 2003. Do you agree with these dates?**

14 A. Yes.

15 **Q. After the parties agreed to this language, please describe what ITC did.**

16 A. ITC began investigating the cost and implementation of LNP. ITC’s investigation
17 began in November 2003 and continued through February 2004. In March 2004, ITC
18 filed its petition, asking the South Dakota Public Utilities Commission to suspend or
19 modify the requirements of Section 251(b)(2) of the Act concerning the provision of
20 local number portability.

21 **Q. ITC’s opposition to Midcontinent’s Motion To Compel and Ms. Lohnes’**
22 **testimony contain e-mail messages between the parties and describe voice mail**
23 **messages and telephone communications between the parties concerning LNP.**

1 **Do you agree that these are the total communications between the parties**
2 **concerning LNP after the Commission approved the Interconnection**
3 **Agreement?**

4 A. To the best of my knowledge, these are the total communications between the parties
5 concerning LNP.

6 **Q. Prior to filing its Motion to Compel, did Ms. Lohnes or anyone else at**
7 **Midcontinent ever tell you that ITC's responses concerning LNP were**
8 **unsatisfactory or that Midcontinent believed ITC was not negotiating in good**
9 **faith?**

10 A. No. You can see from the e-mail messages that Ms. Lohnes never indicated that my
11 responses were unsatisfactory. The first time Midcontinent stated that it believed ITC
12 was not negotiating in good faith was in its Motion To Compel filed at the South
13 Dakota Public Utilities Commission.

14 **Q. In her testimony, Ms. Lohnes states that she was "under the impression that Mr.**
15 **Heiberger simply was delaying the process, and the context of his responses**
16 **corroborates that conclusion." As an example, Ms. Lohnes states that "the**
17 **January 29th conversation referenced a board meeting at which LNP would be**
18 **discussed, yet by February 24th Mr. Heiberger still had not contacted me, nor**
19 **did he ever mention what happened a (sic) the board meeting." Please explain**
20 **why you did not respond to Ms. Lohnes until February 24th.**

21 A. At the time of Midcontinent's request, ITC had not been required to implement LNP
22 and ITC had no experience with the estimated costs and implementation issues in
23 connection with LNP. Once the LNP provision was included in the Midcontinent

1 Interconnection Agreement, ITC personnel began researching the anticipated costs
2 and implementation issues which we would be faced with if we deployed LNP.
3 Because this was a new issue for ITC, it took time for ITC to gather the pertinent
4 information. Once the overall costs and issues were developed, a decision was made
5 to file for a suspension or modification of the LNP requirements because of the
6 projected costs our cooperative members would have to bear. I was not able to
7 discuss LNP deployment with Midcontinent until all aspects of deploying LNP
8 services were identified and discussed with the ITC board of directors, consultants
9 and legal counsel.

10 With respect to Ms. Lohnes' implication that I should have contacted her before
11 February 24, I note that during the January 29th conversation Ms. Lohnes did not ask
12 for a response by a specific date. Furthermore, Ms. Lohnes made no further attempt
13 to contact me between the time period of January 29th to February 24th. If my lack of
14 response was unacceptable, I would expect Ms. Lohnes to have contacted me.

15 I also note that pursuant to the Interconnection Agreement, the LNP negotiation
16 period did not end until May 2004. However, ITC informed Midcontinent of its
17 intent to file a petition for suspension of LNP on May 4, 2004, well before the end of
18 the negotiation period.

19 **Q. Did Midcontinent ever request interim number portability?**

20 A. No. The first time Midcontinent ever mentioned interim number portability was in the
21 direct testimony of W. Tom Simmons, filed on May 13, 2004.

22

1 **Q. Did Midcontinent contact you in any way to pursue negotiations of interim**
2 **number portability?**

3 A. No. Midcontinent has never requested interim number portability nor has it ever
4 asked ITC to negotiate interim number portability.

5 **Q. Are you prepared to discuss interim local number portability with Midcontinent?**

6 A. Yes.

7 **Q. After ITC informed Midcontinent that ITC would file a petition for suspension**
8 **or modification of the LNP requirement; did Midcontinent contact you for**
9 **further negotiations in connection with LNP in the Webster exchange?**

10 A. No. Since ITC informed Midcontinent that it would file a Petition for Suspension or
11 Modification, Midcontinent has not contacted ITC for further negotiations in
12 connection with LNP in the Webster Exchange.

13 **Q. What do you conclude from the fact that Midcontinent has not contacted you in**
14 **connection with negotiations for LNP in the Webster exchange since you**
15 **informed Midcontinent of ITC's intention to file a suspension petition?**

16 A. I conclude that the real purpose of Midcontinent's Motion to Compel is not to compel
17 ITC to negotiate because if negotiation is what Midcontinent really wanted, I would
18 expect them to contact me. Rather, it appears that Midcontinent hopes to influence
19 the Commission's decision on ITC's LNP suspension petition by alleging that ITC
20 engaged in "bad faith negotiations."

21 **Q. Does this conclude your testimony?**

22 A. Yes.

EXHIBIT 1

September 15, 2003

Memo

To: Ben Dickens and Jerry Heiberger

From: Dave Gerdes

Re: ITC Interconnection Agreement; Our file: 4056

What follows is what I understand to be standard number portability language from a BOC interconnection agreement which I have modified to fit our situation. I am suggesting that the language immediately below is probably sufficient for our purposes, because the internal references will yield the process outlined in the succeeding numbered paragraphs. However, if you would prefer to address the process in more detail, we can incorporate the succeeding paragraphs (in such form as we finally agree).

I have made some modifications to address the size of the exchange, most notably in paragraph 10.

D. NUMBER PORTABILITY

As provided in Act Section 251 (b)(2), the Parties shall provide Number Portability ("NP") in accordance with rules and regulations as from time to time prescribed by the FCC and the Commission. Location Routing Number (LRN) is currently being used by the telecommunications industry to provide NP, and will be used by the Parties to implement LNP between their networks. The Parties will follow the LNP (Long-term Number Portability) provisioning process recommended by the North American Numbering Council (NANC) and adopted by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the Ordering and Billing Forum (OBF). The Parties shall provide LNP on a reciprocal basis.

All of the following language implements the basic obligations described above. It is omitted here in order to use a simple number portability provision consistent with the structure of the agreement. If the parties wish, the following language can be used, with the paragraph above numbered one and indented appropriately.

2. LNP shall be provided when a Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B") and the Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) previously provided by Party A, in conjunction with the Telephone Exchange Service(s) provided by Party B. After Party B has received an appropriate authorization in accordance with Applicable Law from a Customer and sends a LSR to Party A, Parties A and B will work together to port the customer's telephone number(s) from Party A's network to Party B's network. In accordance with Applicable Law, each Party will

maintain evidence of authorizations and, upon request, provide copies of such evidence to the other.

3. When a telephone number is ported out of Party A's network, Party A will remove any non-proprietary line based calling card(s) associated with the ported number(s) from its Line Information Database ("LIDB"). Reactivation of the line-based calling card in another LIDB, if desired, is the responsibility of Party B or Party B's Customer.

4. When a Customer of Party A ports his or her telephone number(s) to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported, provided the numbers have been reserved for the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.

5. When a Customer of Party A ports his or her telephone number(s) to Party B, in the process of porting the Customer's telephone number(s), Party A shall implement the ten-digit trigger feature 48 hours prior to Party B's due date. If, in the case of Direct Inward Dialing (DID) numbers and Remote Call Forwarding numbers the LNP ten-digit trigger can not be used, the Parties shall coordinate the Customer's porting using procedures developed by the North American Numbering Council (NANC), or other 'hot cut' procedures as may be mutually agreed to. When Party A receives the porting request, the LNP ten-digit trigger shall be applied to the Customer's line before the due date of the porting activity. When the LNP ten-digit trigger can not be used, Party A and Party B must coordinate the disconnect activity. The Parties agree that changes to a scheduled port will be permitted until 5PM the day of the port and that a due date change may be required. When Party B does not require loop facilities from Party A and the LNP ten-digit trigger has been provisioned, Party A agrees to not disconnect the LNP ten-digit trigger and associated line translations until 11:59 PM on the day of the scheduled port. When a porting request of Party B requires loop facilities from Party A or when the ten-digit trigger is not available from Party A, the Parties must coordinate the disconnection of the loop and/or switch facilities from Party A's network with the activation of the loop and/or switch facilities on Party B's network.

6. The Parties shall furnish each other with the Jurisdiction Information Parameter (JIP) in the Initial Address Message (IAM), containing a Local Exchange Routing Guide (LERG)-assigned NPA-NXX (6 digits) identifying the originating switch on calls originating from LNP-capable switches.

7. Where LNP is commercially available, the NXXs (current and new) in the office shall be defined as portable, except as noted in 14.2.7, and translations will be changed in the Parties' switches to open those NXXs for database queries in all applicable

LNP-capable offices within the LATA of the given switch(es). On a prospective basis, all newly deployed switches will be equipped with LNP capability and so noted in the LERG.

8. Both Parties' use of LNP shall meet the performance criteria specified by the FCC. Both Parties will act as the default carrier to perform LRN queries for the other Party in the event that either Party is unable to perform the routing necessary for LNP, according to the terms and conditions contained in the default carrier's Tariff. Each Party has the right to block default-routed calls entering its network in order to protect the public switched network from overload, congestion, or failure propagation.

9. When a ported telephone number is disconnected, i.e., the telephone number is no longer in service by the original Customer, the ported telephone number will be released back to the donor carrier from which the telephone number had been ported. In addition, when a ported number is disconnected, both Parties shall agree to adhere to the Industry Numbering Committee (INC) Guidelines for the Aging and Administration of Disconnected Telephone Numbers, contained in document INC99-1108-024, dated November 8, 1999.

10. Each Party shall provide LNP using the following provisioning intervals for porting 20 or fewer numbers per customer:

Party B will make commercially reasonable efforts to respond to LNP requests with Firm Order Confirmation within 24 hours (excluding weekends and holidays) of receipt of valid requests; or

Party B will make commercially reasonable efforts to respond to LNP requests with query or error notification within 24 hours (excluding weekends and holidays) of receipt of invalid requests.

Porting orders will be subject to the schedule implemented under the auspices of the Commission. In the absence of such schedule, porting orders will be processed within 3 business days. When requested by Party B, Party A shall provide sufficient workforce to implement the port and to ensure necessary escalation if needed in the event of problems outside of regular working hours.

EXHIBIT 2

D. NUMBER PORTABILITY

The parties shall provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, effective not more than six months from the date of this agreement. Number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that Midcontinent reserves all rights it now has associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree upon terms and conditions for number portability as contemplated by this paragraph.

Exhibit 3

D. NUMBER PORTABILITY

The parties will attempt to negotiate the provision of ~~shall provide~~ number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than~~ within six months from the date of this agreement. To the extent that it is provided, ~~Number~~ portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights they it now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability, ~~as contemplated by this paragraph.~~

EXHIBIT 4

D. NUMBER PORTABILITY

The parties ~~will attempt to negotiate in good faith to achieve the provision of shall~~ provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than~~ within six months from the date of this agreement. ~~To the extent that it is provided,~~ Number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights they it now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability, ~~as contemplated by this paragraph.~~

Exhibit 5

D. NUMBER PORTABILITY

The parties ~~will attempt to negotiate in good faith to achieve the provision of~~ shall provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than~~ within six months from the date of this agreement. To the extent that it is provided, Number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights they it now haves associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability, ~~as contemplated by this paragraph.~~

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNEC-
TION AGREEMENT BETWEEN MID-
CONTINENT COMMUNICATIONS
AND INTERSTATE TELECOMMUNI-
CATIONS COOPERATIVE, INC.

Docket No. TC03-192

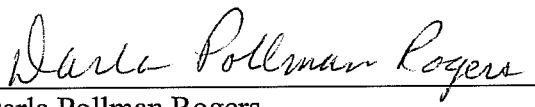
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the original and ten copies on the Commission (via Hand Delivery), and a copy of the **DIRECT PRE-FILED TESTIMONY OF JERRY HEIBERGER** in the above-named docket, upon the person(s) herein next designated, on the date below shown, by depositing copies thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON
P. O. Box 160
Pierre, South Dakota 57501

Pamela Bonrud
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 East Capitol Ave
Pierre SD 57501

Dated this 28th day of May, 2004.


Darla Pollman Rogers
Riter, Rogers, Wattier & Brown LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR)	SUPPLEMENTAL ORDER
APPROVAL OF AN INTERCONNECTION)	FOR AND NOTICE OF
AGREEMENT BETWEEN MIDCONTINENT)	HEARING
COMMUNICATIONS AND INTERSTATE)	
TELECOMMUNICATIONS COOPERATIVE, INC.)	TC03-192

On May 4, 2004, the Commission issued an Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice (Order) in this matter. The procedural history of this docket and statement of jurisdiction is set forth in the Order. The Order provided *inter alia*:

To the extent that the issues and the witnesses and documentary evidence are materially identical in more than one LNP suspension docket, the parties are encouraged to present such common evidence in a consolidated manner that will minimize repetition and opposing parties are encouraged to reasonably stipulate to such consolidated presentation of evidence. The hearing will commence on June 21, with consideration of MidContinent Communications' Motion to Compel, Docket No. TC03-192. Following the hearing on this related docket, the remaining dockets will be heard in docket number order except to the extent that the parties otherwise agree or the Commission shall otherwise order, either prior to or during the hearing. Petition of Santel Communications Cooperative, Inc., Docket No. TC04-038, will be heard on July 1, 2004.

On June 1, 2004 at 1:30 p.m., a pre-hearing scheduling conference was held by teleconference to consider further refinements to the hearing schedule following the filing of pre-filed testimony. The conference was attended by attorneys representing all parties, including commission staff. The purpose of this Order is to expand on and clarify the Order to more specifically schedule the order for consideration of case-specific evidence in the various LNP suspension dockets in order to accommodate, insofar as possible, the schedules of attorneys and witnesses, many of whom will present evidence pertaining to multiple dockets, and to conclude the hearings in time to permit the Commission to render decisions within the time period prescribed by 47 U.S.C. Section 251(f)(2) and ARSD 20:10:32:39 while yet affording a reasonable period for post-hearing briefs.

The parties having conferred through their counsel and having agreed upon a schedule to most efficiently manage the numerous LNP suspension hearings within the limited time available by law for decision, it is therefore

ORDERED, that the hearings in the LNP suspension petition dockets and Docket No. TC03-192 will be conducted in the following order except as the Commission shall otherwise order either prior to or during the hearings (all dates 2004):

June 21, 10:00 a.m.	TC03-192, Midcontinent's Motion to Compel, including any evidence common to this docket and TC04-054
June 21 following TC03-192	TC04-054, ITC
June 22, 10:30 a.m.	TC04-047, Brookings Municipal Utilities

June 23, 8:30 a.m.	TC04-062, Stockholm-Strandburg Telephone Company; TC04-060, Venture Communications Cooperative; TC04-061, West River Cooperative Telephone Company; TC04-077, James Valley Cooperative Telephone Company
June 23, p.m.	Testimony of Steven E. Watkins pertaining to all LNP suspension dockets
June 24, 8:30 a.m.	TC04-050, Valley Telecommunications Cooperative Association, Inc.; TC04-051, Faith Municipal Telephone Company; TC04-045, Golden West Telecommunications Cooperative, Inc.; TC04-044, Sioux Valley Telephone Company; TC04-046, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
June 25, 8:30 a.m.	TC04-055, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc.; TC04-084, Tri-County Telecom, Inc.; TC04-049, McCook Cooperative Telephone Company
June 29, 8:30 a.m.	TC04-025, Kennebec Telephone Company; TC04-052, Midstate Communications, Inc.; TC04-048, Beresford Municipal Telephone Company; TC04-053, Western Telephone Company
June 30, 8:30 a.m.	TC04-085, Cheyenne River Sioux Tribe Telephone Authority; TC04-056, RC Communications, Inc. and Roberts County Telephone Cooperative Association
July 1, 8:30 a.m.	TC04--038, Santel Communications Cooperative, Inc.

Although the Commission will attempt to keep the proceedings within the above schedule, scheduling adjustments may be necessary in the event that proceedings are unable to be completed on the scheduled date or for other good cause. The Commission has scheduled Monday, June 28 as an open hearing date in the event that additional time is needed.

In order to accommodate the testimony common to several dockets and to avoid needless repetition of evidence, the transcript and hearing record for all of the LNP suspension dockets will be recorded as a single transcript and hearing record. A separate transcript and hearing record will be recorded for TC03-192.

It is therefore

ORDERED, that the schedule for the hearing in the LNP suspension dockets and in Docket No. TC03-192 shall be as set forth above; and it is further

ORDERED, that the transcript and hearing record for the LNP suspension dockets and Docket No. TC03-192 shall be recorded as set forth above.

Dated at Pierre, South Dakota, this 16th day of June, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By:

Helaine Kelbo

Date:

6/17/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR) APPROVAL OF AN INTERCONNECTION) AGREEMENT BETWEEN MIDCONTINENT) COMMUNICATIONS AND INTERSTATE) TELECOMMUNICATIONS COOPERATIVE, INC.)	NOTICE OF SCHEDULING CHANGE TC03-192
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------

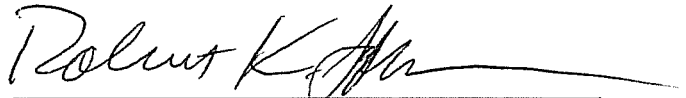
On June 14, 2004, Western Wireless, LLC (WWC) filed an Intervenor's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs (Motion) in the LNP suspension dockets. On June 18, 2004, Petitioners electronically transmitted Petitioners' Response in Opposition to Intervenor's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs. Commission counsel transmitted an email to attorneys for all parties in these proceedings and attempted to schedule a hearing on the Motion for June 18, 2004. Several of the parties have not responded and a quorum of Commissioners cannot be obtained for a hearing on this date. Accordingly, the hearing on WWC's Motion will be held at 11:00 a.m. on June 21, 2004, in the Second Floor Conference Room of the Soldiers and Sailors War Memorial Building (across Capitol Avenue from the Capitol Building), Pierre, South Dakota. The hearing in TC03-192 will be recessed during the hearing on the Motion. It is therefore

ORDERED, that a hearing on WWC's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs will be held at the above time and place and the hearing in TC03-192 will be recessed to accommodate such hearing.

Dated at Pierre, South Dakota, this 18th day of June, 2004.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Tim Douglas</u>
Date: <u>6-18-04</u>
(OFFICIAL SEAL)

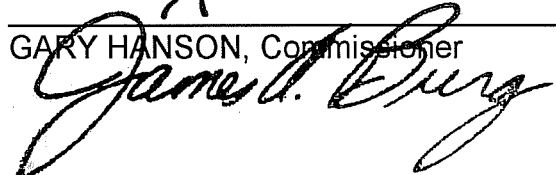
BY ORDER OF THE COMMISSION:



ROBERT K. SAHR, Chairman



GARY HANSON, Commissioner



JAMES A. BURG, Commissioner

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP

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BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

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June 18, 2004

OF COUNSEL
WARREN W. MAY

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966

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605 224-8803

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605 224-6289

E-MAIL
JUN 21 2004
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Pam Bonrud, Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: **MATTER OF APPROVAL OF MIDCONTINENT/ITC INTERCONNECTION
AGREEMENT**

Docket: TC03-192

Our file: 4056

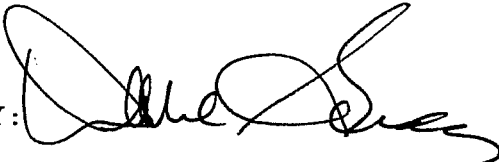
Dear Pam:

Enclosed is a certified copy of the Order admitting J.G.
Harrington *pro hac vice*, which please file.

With a copy of this letter, I am sending a copy of the order
to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosure

cc/enc: Karen Cremer, Harlan Best, Darla Rogers, Ben Dickens,
Richard Coit, Talbot Wieczorek, J.G. Harrington, Mary
Lohnes, Tom Simmons and Nancy Vogel

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION JUN 21 2004
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) TC03-192
APPROVAL OF AN INTERCONNECTION)
AGREEMENT BETWEEN MIDCONTINENT)
COMMUNICATIONS AND INTERSTATE)
TELECOMMUNICATIONS COOPERATIVE, INC.)

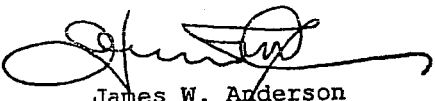
ORDER ADMITTING ATTORNEY
PRO HAC VICE

Upon the sworn motion of J. G. Harrington, submitted to the undersigned pursuant to SDCL § 16-18-2, and upon the motion of David A. Gerdes as a resident practicing attorney of this state with whom said nonresident attorney will practice, it is

ORDERED that J. G. Harrington, may appear on behalf of Midcontinent Communications as a nonresident attorney *pro hac vice* under the terms and conditions set forth in said statute.

Dated this 15 day of June, 2004.

BY THE COURT:


James W. Anderson
Circuit Court Judge
JAMES ANDERSON
Circuit Court Judge

ATTEST:

Christal L. Espeland }
Clerk of Courts } ss
State of South Dakota }
County of Hughes }

(SEAL)

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 15 day of June, 2004.
CHRISTAL L. ESPELAND, Clerk of Courts

By Christal L. Espeland
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

JUN 15 2004

Christal L. Espeland Clerk

Deputy

JUN 22 2004

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

IN CIRCUIT COURT)
)
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings) Docket Nos. TC04-047; TC04-192;
Municipal Utilities d/b/a Swiftel) TC04-025; TC04-044 through TC04-046;
Communications for Suspension or) TC04-048 through TC04-056; TC04-060
Modification of 47 U.S.C. Section 251 (b)(2)) through TC04-062; TC04-084; and
Of the Communication Act of 1934 as) TC04-085
Amended)
)
)
)

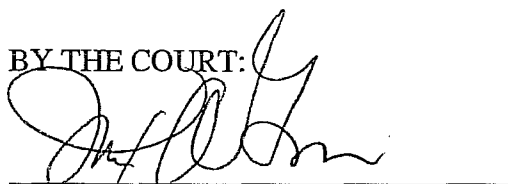
ORDER

The above referenced matter having come before the Honorable Judge Gors, Circuit Court Judge and the Court having reviewed the Motion Requesting Admission of a Nonresident Attorney that was filed in accordance with SDCL 16-18-2 and the Court being in all things duly advised; it is hereby,

ORDERED that the Motion Requesting Admission of a Nonresident Attorney is granted and that Benjamin H. Dickens, Jr., the nonresident attorney, may appear before the South Dakota Public Utilities Commission in Docket No. TC04-047, along with all the other above referenced Docket Nos.

Dated this 16 day of June, 2004.

BY THE COURT:



Circuit Court Judge

ATTEST:

Christal L. Espeland
Clerk of Court

State of South Dakota } ss
County of Hughes }
I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.
Dated this 21 day of June, 2004.
CHRISTAL L. ESPELAND, Clerk of Courts
By Christal L. Espeland
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

JUN 16 2004

Christal L. Espeland Clerk

By _____ Deputy

RECEIVED

JUN 2 2 2004

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

IN CIRCUIT COURT SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings)
Municipal Utilities d/b/a Swiftel)
Communications for Suspension or)
Modification of 47 U.S.C. Section 251 (b)(2))
Of the Communication Act of 1934 as)
Amended)
)
)
)

) Docket Nos. TC04-047; TC04³-192;
) TC04-025; TC04-044 through TC04-046;
) TC04-048 through TC04-056; TC04-060
) through TC04-062; TC04-084; and
TC04-085

ORDER

The above referenced matter having come before the Honorable Judge Gors, Circuit Court Judge and the Court having reviewed the Motion Requesting Admission of a Nonresident Attorney that was filed in accordance with SDCL 16-18-2 and the Court being in all things duly advised; it is hereby,

ORDERED that the Motion Requesting Admission of a Nonresident Attorney is granted and that Mary J. Sisak, the nonresident attorney, may appear before the South Dakota Public Utilities Commission in Docket No. TC04-047, along with all the other above referenced Docket Nos.

Dated this 21 day of June, 2004.

BY THE COURT:

Circuit Court Judge

ATTEST:

Christal L. Espeland
Clerk of Court

State of South Dakota } ss
County of Hughes }
I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.
Dated this 21 day of June, 2004.
CHRISTAL L. ESPELAND, Clerk of Courts
By Christal L. Espeland
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
JUN 21 2004

Christal L. Espeland Clerk
By _____ Deputy

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TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

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July 6, 2004

OF COUNSEL
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GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966

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JUL 06 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: MIDCONTINENT COMMUNICATIONS; MOTION FOR GOOD FAITH
NEGOTIATIONS AND FOR LOCAL NUMBER PORTABILITY

Docket: TC03-192

Our file: 4056

Dear Pam:

Enclosed are original and ten copies of an original Settlement Agreement in the above-entitled matter. Please file the enclosure. You will note that, by its provisions, the parties ask approval of the agreement by the Commission.

With a copy of this letter, I am sending copies of the enclosure to the service list. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Harlan Best, Karen Cremer, Darla Rogers, Ben Dickens,
Richard Coit, Talbot Wieczorek, J. G. Harrington, Mary Lohnes,
Tom Simmons, Nancy Vogel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUL 06 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) TC03-192
APPROVAL OF AN INTERCONNECTION)
AGREEMENT BETWEEN MIDCONTINENT)
COMMUNICATIONS AND INTERSTATE) SETTLEMENT AGREEMENT
TELECOMMUNICATIONS COOPERATIVE INC.)

Midcontinent Communications ("Midcontinent") and Interstate Telecommunications Cooperative, Inc., ("ITC"), parties in the above-entitled docket, in settlement of the issues between them in said docket, agree as follows:

DEFINITIONS

As used in this agreement, the following terms have the following meanings:

- A. "Commission" means the South Dakota Public Utilities Commission.
- B. "Party" means either Midcontinent or ITC and "Parties" means Midcontinent and ITC.
- C. "Transitional Number Portability Measure" for the purpose of this agreement as to intramodal local number portability only (in part as defined in 47 CFR § 52.21(r)) means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 47 CFR § 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF) and Direct Inward Dialing (DID).
- D. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined therein.

1. Midcontinent is operating in ITC's Webster exchange pursuant to an interconnection agreement dated November 6, 2003, and approved by the Commission by order in this docket dated December 22, 2003. Among other things, and specifically as to number portability, the agreement provides as follows:

D. NUMBER PORTABILITY

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability.

2. The Commission now has pending before it in this docket Midcontinent's motion to compel local number porting or good faith negotiation. Subsequent to the filing of the motion, ITC filed a petition before the Commission in docket TC04-054 requesting a suspension or modification pursuant to 47 U.S.C. § 251(f) (2). Presently, the Commission has taken evidence on Midcontinent's pending motion in this docket and is taking evidence on ITC's petition in docket TC04-054. The Commission has rendered a decision in neither docket.

3. ITC agrees to provide to Midcontinent in its Webster Exchange transitional number portability measures as soon as reasonably possible, but in no event, later than August 1, 2004. Midcontinent will provide local number portability in return at a technical level at least equal to that of ITC. Cost recovery for transitional number portability will be on a reciprocal basis as negotiated in good faith by the Parties, provided that if the parties have not reached agreement on cost recovery by August 1, 2004, either party may petition the Commission to establish a cost recovery mechanism for transitional number portability pursuant to applicable rules of the Commission and the FCC. Thereafter, the parties further agree to abide by the decision and order of the

Commission in Docket TC04-054 with regard to the provision of long term number portability.

4. Upon the approval of this agreement by the Commission, Midcontinent agrees to dismiss its motion to compel local number porting or good faith negotiation now pending in this docket, provided that should ITC fail to comply with either this agreement or the aforesaid interconnection agreement in the Webster exchange mentioned in paragraph 1, Midcontinent is free to pursue such remedies before the Commission, or otherwise, as it deems appropriate.

5. Nothing in this agreement is intended to affect the ability of Midcontinent to continue to appear in docket TC04-054 to advocate its position on the provision of wireline to wireline local number portability and its view of the relief which the Commission should provide to ITC and other rural telecommunications carriers in the series of dockets generally known as the local number portability dockets now pending before the Commission.


6. The parties understand and agree that this agreement will be filed with the Commission and will at all times be subject to review by the Commission. Should any such review reject any portion of this agreement, render it inoperable or create any ambiguity or requirement for further amendment, the parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

7. This agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof. This agreement will become effective upon approval by the Commission.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective authorized representatives.

MIDCONTINENT COMMUNICATIONS


Date: 2/1/04

BY: 
ITS: Vice President-Public Policy

INTERSTATE TELECOMMUNICATIONS

COOPERATIVE, INC.

Date: June 30, 2004

BY: 
ITS: General Manager

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
JUL 07 2004

===== SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNECTION
AGREEMENT BETWEEN MIDCONTINENT
COMMUNICATIONS AND INTERSTATE
TELECOMMUNICATIONS COOPERATIVE,
INC.

TC03-192

=====

Transcript of Proceedings
June 21, 2004

ORIGINAL

=====

BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
JIM BURG, COMMISSIONER

COMMISSION STAFF
John Smith
Rolayne Ailts Wiest
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Tina Douglas
Heather Forney
Pam Bonrud

A P P E A R A N C E S

DARLA POLLMAN ROGERS,
RITER, ROGERS, WATTIER & BROWN,
Attorneys at Law, 319 South Coteau Street,
Pierre, South Dakota 57501,
appearing on behalf of Interstate
Telecommunications Cooperative, Inc.;

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA
3 -----
4 IN THE MATTER OF THE FILING FOR
5 APPROVAL OF AN INTERCONNECTION TC03-192
6 AGREEMENT BETWEEN MIDCONTINENT
7 COMMUNICATIONS AND INTERSTATE
8 TELECOMMUNICATIONS COOPERATIVE,
9 INC.
10 -----
11 Transcript of Proceedings
12 June 21, 2004
13 -----
14 BEFORE THE PUBLIC UTILITIES COMMISSION,
15 ROBERT SAHR, CHAIRMAN
16 GARY HANSON, VICE CHAIRMAN
17 JIM BURG, COMMISSIONER
18
19 COMMISSION STAFF
20 John Smith
21 Rolayne Ailts Wiest
22 Greg Rislov
23 Harlan Best
24 Keith Senger
25 Dave Jacobson
26 Michele Farris
27 Tina Douglas
28 Heather Forney
29 Pam Bonrud
30
31 A P P E A R A N C E S
32
33 DARLA POLLMAN ROGERS,
34 RITER, ROGERS, WATTIER & BROWN,
35 Attorneys at Law, 319 South Coteau Street,
36 Pierre, South Dakota 57501,
37 appearing on behalf of Interstate
38 Telecommunications Cooperative, Inc. ;
39
40 Reported By Cheri McComsey Wittler, RPR

1 APPEARANCES (Continued) 2
2 BENJAMIN H. DICKENS and MARY J. SISAK,
3 BLOOSTON, MORDKOFESKY, DICKENS, DUFFY &
4 PRENDERGAST,
5 Attorneys at Law, 2120 I Street, NW, Suite 300,
6 Washington, D.C. 20037,
7 appearing as co-counsel on behalf of
8 Interstate Telecommunications Cooperative,
9 Inc. ;
10
11 DAVID A. GERDES,
12 MAY, ADAM, GERDES & THOMPSON,
13 Attorneys at Law, 513 South Pierre Street,
14 Pierre, South Dakota 57501,
15 appearing on behalf of Midcontinent
16 Communications ;
17
18 J.G. HARRINGTON,
19 DOW, LOHNES & ALBERTSON, PLLC,
20 Attorneys at Law, 1200 New Hampshire Avenue,
21 NW, Suite 800,
22 Washington, D.C. 20036-6802,
23 appearing as co-counsel on behalf of
24 Midcontinent Communications.
25

1 TRANSCRIPT OF PROCEEDINGS, held in the 3
2 above-entitled matter, at the Soldiers and Sailors
3 World War Memorial Building, 425 East Capitol Avenue,
4 Pierre, South Dakota, on the 21st day of June 2004, and
5 at the State Capitol Building, 500 East Capitol Avenue,
6 on the 22nd day of June 2004.
7 -----
8 I N D E X
9
10 Witnesses Direct Cross Redir Recross
11 Tom Simmons 6 8,9,11 -- --
12 Mary Lohnes 11 14 15 18
13 Jerry Heiberger 27 39,49 50,59 51
14
15 Midco Exhibit Nos. M O R
16 1 - Simmons Direct Testimony 3 7 7
17 2 - Lohnes Direct Testimony 3 13 13
18 3 - Interconnection Agreement 3 7 8
19
20 ITC Exhibit Nos. M O R
21
22 1 - Heiberger Direct 3 32 39
23
24 2 - LNP Time line 66 66 66
25
26 (Midco Exhibits 1 through 3 are marked for
27 identification)
28
29 (ITC Exhibit 1 is marked for identification)

1 CHAIRMAN SAHR: I will begin the 4
2 hearing for Docket TC03-192, In the matter of the
3 filing for approval for an Interconnection
4 Agreement between Midcontinent Communications and
5 Interstate Telecommunications Cooperation, Inc.
6 The time is approximately 10 a.m. The date is
7 June 21, 2004, and the location of the hearing is
8 in the second floor conference room of the Soldiers
9 and Sailors War Memorial Building, Pierre, South
10 Dakota.
11 I am Robert K. Sahr, Commission Chairman.
12 Commissioners Gary Hansen and Jim Burg are also
13 present. I am presiding over this hearing. This
14 hearing was noticed pursuant to the Commission's
15 order for and notice of procedural schedule issued
16 May 4, 2004.
17 The issue at this hearing is whether the
18 Commission shall issue an order requiring ITC to
19 engage in good-faith negotiations regarding local
20 number porting to Midcontinent and/or an order
21 requiring ITC to provide wire-to-wire number
22 porting to Midcontinent.
23 All parties have the right to be present and
24 to be represented by an attorney. All persons so
25 testifying will be sworn in and subject to

1 cross-examination by the parties. The Commission's
2 final decision may be appealed by the parties to
3 the State Circuit Court and the State Supreme
4 Court.

5 John Smith will act as Commission counsel. He
6 may provide recommended rulings on procedural and
7 evidentiary matters. The Commission may overrule
8 its counsel's preliminary rulings throughout the
9 hearing. If not overruled, the preliminary rulings
10 will become final rulings.

11 At this time I will take the appearances of
12 the parties.

13 MR. GERDES: Mr. Chairman, members
14 of the Commission, my name is Dave Gerdes. I'm a
15 lawyer from Pierre, the law firm of May, Adam,
16 Gerdes & Thompson. We appear for Midcontinent
17 Communications. With me is J.G. Harrington, an
18 attorney at law from Washington, D.C.

19 Mr. Harrington is admitted pro hac vice by the
20 Circuit Court of South Dakota.

21 COMMISSIONER BURG: Who are you
22 representing?

23 MR. GERDES: Midcontinent.

24 MS. POLLMAN ROGERS: My name is
25 Darla Pollman Rogers. I'm an attorney from Pierre,

1 true copy of your prefiled testimony?

2 A It is.

3 Q And do you have any additions or corrections to the
4 testimony?

5 A No.

6 Q And if you were sworn and testified at length as to the
7 matters covered in that testimony, would your testimony
8 be the same as that set forth in the Exhibit 1?

9 A It would.

10 MR. GERDES: Offer Exhibit 1.

11 MS. POLLMAN ROGERS: No objections.

12 MR. SMITH: Exhibit 1 is admitted.

13 Q Mr. Simmons, I'll show you what has been marked as
14 Exhibit 3, and is that the Interconnection Agreement
15 approved by the Commission between Midcontinent and
16 ITC?

17 A Yes, it is.

18 Q And your signature appears thereon?

19 A Correct.

20 MR. GERDES: Offer Exhibit 3.

21 MS. POLLMAN ROGERS: Could we see a
22 copy of that, please.

23 MR. GERDES: Sure. I have extras.

24 I made a lot. I'm not sure who all wants them
25 because they're part of the --

1 South Dakota, and I am here representing ITC. And
2 with me today I have Ben Dickens and Mary Sisak
3 both from Washington, D.C., and they are appearing
4 pro hac vice pursuant to the order of the circuit
5 court.

6 MS. WIEST: Rolayne Wiest, staff
7 attorney for the PUC.

8 CHAIRMAN SAHR: Shall we begin.

9 MR. SMITH: Mr. Gerdes, would you
10 like to begin your case in chief.

11 MR. GERDES: Thank you, Mr. Smith.
12 We'll call Tom Simmons.

13 TOM SIMMONS,
14 called as a witness, being first duly sworn in the
15 above cause, testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. GERDES:

18 Q Would you state your name, please.

19 A W. Tom Simmons.

20 Q Where do you reside?

21 A I reside in Sioux Falls, South Dakota.

22 Q And are you the W. Tom Simmons that filed in this
23 matter prefiled direct testimony?

24 A I am.

25 Q And showing you what's marked as Exhibit 1, is that a

1 MR. SMITH: Exhibit Midco 3 is
2 admitted.

3 MR. GERDES: Tender the witness for
4 cross-examination.

5 CROSS-EXAMINATION

6 BY MS. SISAK:

7 Q Mr. Simmons, is Midcontinent requesting long-term
8 number portability and also interim number portability
9 from ITC?

10 A I don't think we're requesting both. We're requesting
11 number portability, local number portability.

12 Q Are you aware in Mr. Heiberger's rebuttal testimony
13 where he indicated that he was prepared to discuss
14 interim local number portability with Midcontinent?

15 A Well, we were under the assumption that ITC had been
16 prepared to discuss local number portability since our
17 Interconnection Agreement, but to my understanding that
18 has not taken place for a variety of reasons.

19 Q Have you requested Mr. Heiberger or ITC to discuss
20 interim number portability at any time?

21 A No. We have requested a discussion on local number
22 portability, whether that be long-term or interim or in
23 any manner. We haven't gotten to a position yet where
24 we've been able to discuss any alternatives.

25 Q When was the last request that you made of ITC to

1 discuss number portability?
2 A I did not make that request. That request was made by
3 our telephone office, and perhaps Ms. Lohnes would be
4 in a better position to answer that question.

5 MS. SISAK: That's all that I have.

6 MR. SMITH: Ms. Wiest.

7 CROSS-EXAMINATION

8 BY MS. WIEST:

9 Q Mr. Simmons, you mentioned LNP as a temporary option.
10 What length of time would you define as temporary?

11 A As far as interim, I don't know they have a temporary
12 time period. The reason I offered that as an option,
13 it was one of the early options and in fact one that we
14 put into place in our earlier Interconnection Agreement
15 with then US West Communications. The interim number
16 portability was designed to be an option to take place
17 until such time that local -- or long-term or permanent
18 number portability could take place. And that's the
19 level of our experience with interim number
20 portability.

21 My assumption is if it was an acceptable
22 means to get to the ultimate end of offering number
23 portability in our Interconnection Agreements with
24 regional bell operating companies, it may be a
25 reasonable option in this particular case until such

1 MS. WIEST: Okay. Thank you.
2 That's all I have.
3 MR. SMITH: Mr. Gerdes.
4 MR. GERDES: I have no further
5 questions.

6 CROSS-EXAMINATION

7 BY MS. SISAK:

8 Q May I add a point of clarification? Is it correct that
9 there is no Interconnection Agreement currently between
10 ITC and Midcontinent for Waubay?

11 A I believe that's correct.

12 MR. SMITH: Is there any follow-up
13 cross-examination by ITC?

14 MS. SISAK: No. Just that one
15 question. Thank you.

16 MR. SMITH: Thank you. The witness
17 is excused.

18 MR. GERDES: Call Mary Lohnes.
19 MARY LOHNES,
20 called as a witness, being first duly sworn in the
21 above cause, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MR. GERDES:

24 Q Would you state your name, please.

25 A Mary Lohnes.

1 time we could understand what long-term number
2 portability really meant and what the real costs would
3 be to provide such portability.

4 Q And then I believe on page 5 of your testimony you
5 state that the cost estimates appear to be
6 extraordinarily high. Are there any certain elements
7 you can point to being too high in your opinion, or do
8 you think all of them are too high?

9 A Well, again, I can't go to any specific cases, only
10 generally from our own experience, but it struck me odd
11 that we would have some high recurring marketing costs
12 and some of the recurring costs struck me as being less
13 of an issue, again, only because of our experience in
14 dealing with number portability issues with our
15 experience with Qwest Communications.

16 Q And are we only talking about the Webster exchange? I
17 believe Mr. Heiberger stated Midco has requested LNP to
18 Webster and Waubay?

19 A We've requested it to Webster and Waubay as part of
20 Interconnection Agreements with Webster and Waubay.

21 Q And this proceeding here, is this proceeding limited to
22 Waubay or Webster or both?

23 A My portion of the testimony is related to Webster and
24 Waubay or in those markets where we would have an
25 Interconnection Agreement with ITC.

1 Q Where do you reside?

2 A Sioux Falls, South Dakota.

3 Q And are you the Mary Lohnes that filed prefiled
4 testimony in this case?

5 A Yes, I am.

6 Q And I'll show you what has been marked Exhibit 2 and
7 I'll ask you if that is a copy of your prefiled
8 testimony.

9 A Yes, it is.

10 Q And do you have any additions or corrections to make to
11 that testimony?

12 A No, I don't.

13 Q And if you were sworn to testify on the subjects
14 covered by that testimony, would that be the substance
15 of your testimony on those issues?

16 A Yes, it is.

17 Q Could you summarize your testimony, please.

18 A Midcontinent is seeking local number portability as to
19 our Interconnection Agreement that the two companies
20 reached and was approved by the PUC, and in that
21 agreement we had asked for negotiations with ITC to
22 work out the details of providing number portability.

23 To this date and per the time line that I
24 have given in my testimony we can demonstrate that
25 there was ample amount of notice and time for those

1 negotiations to take place and they never did. We can
2 also demonstrate through our testimony that there
3 appears to be a lack of interest on the part of ITC to
4 negotiate in good faith in providing local number
5 portability per the agreement by the delay in
6 conversations.

7 We feel that their decision to file a
8 petition with the Commission to suspend under the
9 wireless porting order also leads us to believe that
10 they simply are delaying providing portability to
11 Midcontinent.

12 We feel that the Commission should help us
13 get the relief to negotiate, if not to order wireline
14 portability.

15 MR. GERDES: Tender for
16 cross-examination.

17 MR. SMITH: Did you have an exhibit
18 you wanted to offer?

19 MR. GERDES: Offer Exhibit 3.

20 MS. POLLMAN ROGERS: No objection.

21 MR. GERDES: 2 and 3. Offer Exhibit
22 2. Excuse me.

23 MR. SMITH: Exhibit 2, Midco's
24 Exhibit 2 is admitted.
25

1 A The Interconnection Agreement asks that we negotiate
2 local number portability, and I believe that according
3 to the spirit of the Telecommunications Act and under
4 Section 251(b) that all local exchange companies are
5 required to provide local number portability.

6 Q Well, the number portability -- the number portability
7 clause that you negotiated with my client recognized
8 the parties may not come to an agreement on the
9 provision of LNP, didn't it?

10 A It did.

11 MR. DICKENS: Thank you. Those are
12 all the questions I have.

13 MS. WIEST: I have no questions.

14 MR. SMITH: Redirect?

15 MR. GERDES: No questions.

16 MS. WIEST: I had no questions.

17 MR. SMITH: She had no questions.

18 REDIRECT EXAMINATION

19 BY MR. GERDES:

20 Q Ms. Lohnes, on the question of local number
21 portability, did you attempt to -- did you or anyone
22 from Midcontinent ever meet with anyone from ITC?

23 A Yes, we did have meetings, early meetings.

24 Q All right. Were there ever any discussions about how
25 to deploy local number portability at those meetings?

1
2 CROSS-EXAMINATION

3 BY MR. DICKENS:

4 Q Ms. Lohnes, I'm Ben Dickens.

5 A Hello.

6 Q I keep thinking we've met, but we haven't.

7 A Okay.

8 Q I want to just be sure that I understand the thrust of
9 your testimony and your company's position. As I read
10 your testimony and some of your Interrogatory Answers
11 you provided, it appears to me at least -- this is a
12 question, I promise you -- but it appears to me that
13 Midco is unhappy and wants ITC to negotiate further on
14 the subject of LNP -- that's one thing -- and the other
15 thing that y'all want is you want ITC to actually
16 deploy LNP for you in the Webster exchange; is that
17 right?

18 A Correct.

19 Q And as I understand an Interrogatory Answer that you
20 supplied that's Interrogatory No. 1, that Interstate
21 submitted to you, it's your position that the
22 good-faith negotiation requirement of the
23 Interconnection Agreement we've reached actually
24 requires Interstate Telephone Cooperative to provide
25 you with local number portability; is that right?

1 A How to deploy it, no.

2 Q And has Midcontinent ever had discussions with ITC on
3 the method of deployment of LNP?

4 A Not to my recollection.

5 Q And did you attempt to obtain or schedule meetings to
6 discuss the employment of the -- the deployment of
7 local number portability?

8 A Yes. I made several attempts to.

9 MR. DICKENS: Excuse me. I
10 apologize for interrupting your rhythm, but I'd
11 like to interpose an objection. I don't think
12 that's within the scope of my cross-examination.

13 MR. SMITH: Response, Mr. Gerdes?

14 MR. GERDES: Unless I'm asked, I
15 don't usually argue legal objections, Mr. Smith.
16 The subject of negotiations was in fact the subject
17 matter of cross-examination, and we're entitled to
18 go into that subject with her.

19 MR. SMITH: I'm going to overrule
20 the objection.

21 A Yes. I made several attempts to contact Mr. Heiberger
22 at ITC to set up a meeting where we could discuss
23 number portability.

24 Q And your testimony and the exhibits to your testimony
25 recount those facts; is that correct?

17

1 A Yes, they do.

2 Q Would you just detail those for us again.

3 A My first contact with Mr. Heiberger was on December 29

4 of 2003 asking that we begin our discussions on number

5 portability. Mr. Heiberger did respond back a number

6 of days later and tentatively set a date for our

7 meeting.

8 The date that he set had already gone past by

9 the time he corresponded with me so I got back in touch

10 with Mr. Heiberger, asked him to clarify which date he

11 actually wanted to have that meeting. We agreed on a

12 date for January 12 of 2004. That did not happen.

13 Mr. Heiberger had gotten back in contact with

14 me that he needed to do some more research before he

15 could have the meeting with us.

16 On January 28 and 29 we exchanged some phone

17 calls to discuss the status of the local number

18 portability, and we also talked about connectivity,

19 interconnecting problems that we were experiencing

20 through the process also.

21 So more time passes. We did not set a

22 meeting to discuss number portability. On February 24

23 I sent another e-mail to Mr. Heiberger for the status

24 of his LNP research and if they were ready to have a

25 meeting. Mr. Heiberger responded back that he still

18

1 needed to have a meeting with his personnel to discuss

2 some of the details, costs involved, and all of those

3 items.

4 On March 3 I sent another e-mail to

5 Mr. Heiberger, asked if he was now ready to meet. He

6 responded back on the 4th that they had decided to

7 petition the Commission for a suspension of LNP.

8 Q And have you had any overtures from either

9 Mr. Heiberger or anybody else from ITC since that time

10 concerning discussions on local number portability?

11 A No, we have not.

12 MR. DICKENS: I'm sorry. Are you

13 finished?

14 MR. GERDES: No.

15 MR. DICKENS: Excuse me.

16 Q And is Midcontinent ready, willing, and able to meet at

17 any reasonable time and place on the issue of

18 establishing and implementing local number portability?

19 A Yes, we are.

20 MR. GERDES: That's all I have.

21 MR. SMITH: Mr. Dickens.

22 MR. DICKENS: Thank you. Pardon

23 me.

24 RECROSS-EXAMINATION

25 BY MR. DICKENS:

19

1 Q Your counsel asked if you received any overtures from

2 Mr. Heiberger's company since -- I believe the relevant

3 date was since the company filed the suspension

4 petition?

5 A Correct.

6 Q Have you made any overtures yourself to Interstate

7 Telephone Cooperative since that date?

8 A In regard to Webster?

9 Q Yes.

10 A Not that I recall.

11 MR. DICKENS: Thank you.

12 MR. SMITH: Ms. Wiest?

13 MS. WIEST: No questions.

14 MR. SMITH: Do the Commissioners

15 have any questions?

16 COMMISSIONER BURG: Have you had an

17 requests for porting in Webster yet?

18 THE WITNESS: Yes, we have.

19 COMMISSIONER BURG: How many?

20 THE WITNESS: I don't know the

21 number, but I am contacted regularly by my staff

22 wondering if we're able to do that.

23 VICE CHAIR HANSON: Ms. Lohnes, did

24 Mr. Heiberger at any time offer dates to you that

25 you were not willing to meet with him?

20

1 THE WITNESS: There may have been a

2 date only because we're not able to get the whole

3 staff together on a particular date that was

4 offered. But I would always counteroffer another

5 alternative date.

6 VICE CHAIR HANSON: Just try and

7 figure out whether there's a similar situation on

8 the other side of the fence where they may be

9 looking at trying too. Are you satisfied that

10 there's no desire to meet with you to negotiate

11 this?

12 THE WITNESS: It appeared that there

13 was no desire to meet with Midcontinent.

14 VICE CHAIR HANSON: Thank you.

15 MR. GERDES: That's all I have.

16 MR. SMITH: Commissioner questions?

17 I have one question, if I may. Is Midcontinent set

18 up and prepared to proceed with the LNP on its end?

19 THE WITNESS: Yes, we are.

20 MR. SMITH: Thank you.

21 MR. GERDES: Just so the record is

22 clear just for clarification if I may, you in fact

23 are interconnected in the Webster exchange; is that

24 correct?

25 THE WITNESS: Yes, we are. We are

1 interconnected. We do have customers, we're just
 2 not able to port numbers.
 3 MR. SMITH: Mr. Dickens, do you have
 4 any questions following up on the Commissioners'
 5 questions?
 6 MR. DICKENS: I do not.
 7 MR. SMITH: Ms. Wiest?
 8 MS. WIEST: No.
 9 MR. SMITH: The witness is excused.
 10 MR. GERDES: We rest.
 11 MR. SMITH: Ms. Rogers, you may
 12 proceed with your case.
 13 MS. POLLMAN ROGERS: Thank you.
 14 Commissioner, I'm going to -- Mr. Smith, I'm going
 15 to defer to Ben Dickens. Could we be allowed to
 16 make a brief opening statement at this time?
 17 MR. GERDES: I'm sorry. I'm having
 18 trouble hearing.
 19 MS. POLLMAN ROGERS: I just
 20 requested the opportunity to make a brief opening
 21 statement at this time.
 22 MR. SMITH: You may.
 23 MS. POLLMAN ROGERS: Mr. Dickens.
 24 MR. DICKENS: Thank you,
 25 Commissioners.

1 a Motion to require local number porting or
 2 good-faith negotiation.
 3 ITC signed an Interconnection Agreement which
 4 was approved by the Commission back in December of
 5 2003, and that agreement carries with it an
 6 obligation to negotiate in good faith the issue of
 7 local number portability. And we believe that
 8 under 47 U.S.C. 251(b)(2) clearly the Federal Act
 9 requires local number portability. We are here
 10 dealing with wireline-to-wireline local number
 11 portability, not wireless local number portability,
 12 which is the other part of this. We understand
 13 that the technology is there and can be employed.
 14 The facts will show, we believe, that there
 15 were multiple attempts by Midcontinent, always by
 16 Midcontinent, to instigate the conversations and to
 17 obtain a meeting whereby we could discuss the
 18 deployment of local number portability, always met
 19 with an excuse or a suggestion that we defer the
 20 meeting until the petition in this matter that was
 21 filed by ITC.
 22 We believe that at the very least good-faith
 23 negotiation means that you at least sit down at the
 24 table and discuss your problems if you in fact are
 25 having problems rather than, my word, not anybody

1 MR. GERDES: Just a minute,
 2 Mr. Dickens. I object. If we were going to make
 3 opening statements, I should have been given the
 4 opportunity at the outset of our case as well.
 5 Typically we don't make opening statements unless
 6 the Commission asks for them, at least in my
 7 experience.
 8 MR. SMITH: Do you want the
 9 opportunity to make an opening statement,
 10 Mr. Gerdes?
 11 MR. GERDES: Well, sure.
 12 MR. SMITH: Why don't you do that,
 13 and we'll let Mr. Dickens make his.
 14 MR. GERDES: I apologize.
 15 MR. SMITH: I apologize.
 16 MR. GERDES: I had thought about
 17 that, but at least in my past experience that's
 18 been brought up by the Commission.
 19 MR. SMITH: I would encourage the
 20 attorneys to keep the opening statements to what
 21 opening statements are intended to be, though,
 22 which is just a description of the case you intend
 23 to make and not an argument.
 24 MR. GERDES: Mr. Chairman, members
 25 of the Commission, very briefly, our Motion here is

1 else's, rather than stonewalling Midcontinent who
 2 is in our feeling attempting to negotiate in good
 3 faith on this very important subject.
 4 MR. SMITH: Mr. Dickens.
 5 MR. DICKENS: Thank you. Well, let
 6 me begin by reversing the order of what I was going
 7 to say. There has been no stonewalling in this
 8 case, and the evidence will show that.
 9 What the parties negotiated, Commissioners, is
 10 an agreement to negotiate in good faith the
 11 provisioning of number portability within -- it
 12 would hopefully have been resolved within the six
 13 months of the date of the agreement.
 14 The agreement itself, which is contained in --
 15 the relevant provision is contained on page 6 of
 16 Exhibit 3, I won't read it to you but it's about a
 17 2-and-a-half, 3-inch paragraph, clearly recognizes
 18 that number portability might have not been
 19 provided. As a result of this negotiation, the
 20 parties reserved their legal right in case number
 21 portability was not provided.
 22 There is a history of negotiation included as
 23 exhibits to Mr. Heiberger's testimony that shows
 24 three times Midco submitted proposed language to us
 25 in this agreement requiring us to implement number

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1 portability, and every time it was rejected by
 2 Interstate Telephone Cooperative because Interstate
 3 Telephone Cooperative had a fair amount of due
 4 diligence to do to decide if this was an
 5 economically reasonable thing to do.
 6 After the agreement was negotiated and
 7 approved by this Commission, Mr. Heiberger began
 8 the process of examining how much it's going to
 9 cost to provide local number portability and
 10 whether it's a feasible thing for his company to
 11 do. He stayed in touch with Ms. Lohnes during this
 12 time. Ms. Lohnes was not calling him saying you're
 13 negotiating in bad faith, you're stonewalling us,
 14 doing all of these bad things. Mr. Heiberger was
 15 in touch with her saying I'm running this stuff by
 16 my board to see how much it costs.
 17 There was no surprise here. The first time
 18 Midco complained about getting stonewalled or
 19 subjected to bad-faith dealings is when we filed
 20 the petition for suspension. If we wanted to act
 21 in bad faith, we would have waited six months and
 22 used six months of their time negotiating and said,
 23 guess what, we've got a suspension petition, but
 24 that didn't happen.
 25 Mr. Heiberger concluded his review with his

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1 staff and his board of directors and his attorneys
 2 of the cost and the potential solutions to those
 3 cost factors that were very important to his
 4 company. He called Ms. Lohnes. He said we're
 5 going to file a petition for suspension. And that
 6 brought us until today.
 7 But the agreement itself said nothing about --
 8 does not obligate Interstate Telephone Cooperative
 9 to provide number portability. It obligated us to
 10 enter into a negotiation process. There is plenty
 11 of law we will address in our brief about what
 12 negotiation really means, but he stayed in touch
 13 with Ms. Lohnes during the discussion of examining
 14 the cost. It was no secret Interstate Telephone
 15 Cooperative was examining the cost. We filed the
 16 petition to suspend local number portability. It
 17 will be heard perhaps later today. It does cover
 18 wireline-to-wireline portability and
 19 wireline-to-wireless portability. That issue will
 20 be fully addressed. I believe Midco is an
 21 Intervener in that Docket and has a full
 22 opportunity to be heard as to whether that
 23 requirement should be suspended or not.
 24 But to me it's a heck of a stretch to draft an
 25 agreement that recognizes number portability might

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1 not be supplied, reserve your legal rights in case
 2 it's not and then get hit with a complaint that
 3 says we think this requires you to provide local
 4 number portability. The argument doesn't make any
 5 sense to me. Anyway, that's what our case is all
 6 about, and we'll call Mr. Heiberger next.
 7 MR. SMITH: Just to keep this on a
 8 level playing field, Ms. Wiest, did you have any
 9 opening statement?
 10 MS. WIEST: Not in this case.
 11 JERRY HEIBERGER,
 12 called as a witness, being first duly sworn in the
 13 above cause, testified under oath as follows:
 14 DIRECT EXAMINATION
 15 BY MR. DICKENS:
 16 **Q** Mr. Heiberger, would you state your name and address
 17 for the record, please, sir.
 18 **A** My name is Jerald J. or Jerry Heiberger, a resident of
 19 Clear Lake, South Dakota.
 20 **Q** I'm going to hand you a copy of your direct prefiled
 21 testimony dated May 28, 2004. It's been premarked as
 22 Exhibit ITC 1, and I would ask you to look that over
 23 and tell me if that appears to be a true copy of your
 24 testimony and associated exhibits.
 25 **A** Yes, it is.

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1 MR. GERDES: May I look at that?
 2 MR. DICKENS: Sure.
 3 MR. GERDES: I don't have a copy of
 4 this. All I have is the testimony in the other
 5 Docket.
 6 CHAIRMAN SAHR: I may have missed
 7 it, but would you please identify the date on that.
 8 MS. POLLMAN ROGERS: May 28, 2004,
 9 certificate of service.
 10 MR. GERDES: I have testimony -- I
 11 apologize, but I have testimony that's dated May 14
 12 in the 054 Docket. That's the only thing I have.
 13 MR. DICKENS: Is that the LNP
 14 suspension Docket?
 15 MR. GERDES: Yeah. That's the other
 16 Docket, the 054 Docket. But it covers the subject
 17 that you've described, and that's the only one I've
 18 seen.
 19 MS. POLLMAN ROGERS: Certificate of
 20 service, served you on May 28.
 21 MS. SISAK: Mr. Simmons testified
 22 that he had reviewed this document. When I asked
 23 the question concerning Mr. Heiberger's statement
 24 that he was willing to discuss interim number
 25 portability you indicated that you were aware of

1 that and his testimony.
 2 MR. GERDES: Well, I'm sorry. I
 3 don't have it. Do you have it?
 4 MR. SIMMONS: I don't have it with
 5 me.
 6 MR. GERDES: Could we go off the
 7 record?
 8 CHAIRMAN SAHR: Yes.
 9 (Discussion off the record)
 10 MR. SMITH: The Chairman has made a
 11 ruling that we will be in recess from now until the
 12 conclusion of the Motion hearing in the LNP dockets
 13 to provide Mr. Gerdes an opportunity to review ITC
 14 Exhibit 1, which Mr. Gerdes has stated he did not
 15 receive.
 16 Is there anything that anybody would want to
 17 add to that?
 18 (No audible response)
 19 MR. SMITH: We're in recess.
 20 (A recess is taken)
 21 MR. SMITH: We are back on the
 22 record in TC03-192. We had gone into recess to
 23 enable Mr. Gerdes to review ITC's exhibit labeled
 24 ITC 1, which was the prefiled testimony of
 25 Jerry Heiberger. Mr. Heiberger --

1 your prefiled testimony.
 2 A And it is, yes.
 3 Q Okay. Are there any changes or additions or
 4 corrections to that testimony?
 5 A No.
 6 Q Do you have a summary of your testimony?
 7 A Yes, I do. What I'd like to start out by saying is
 8 that ITC never agreed to provide LNP services to
 9 Midcontinent. We specifically reserved our rights to
 10 pursue our legal options, thus being able to file for
 11 suspension and modification through that
 12 Interconnection Agreement that was signed back in
 13 December of last year.
 14 Midcontinent knew that ITC may not provide
 15 LNP. They agreed to this in the Interconnection
 16 Agreement that's been signed.
 17 I feel that myself and my staff proceeded in
 18 good faith to examine the costs and all other pertinent
 19 issues that pertain to installing and deploying LNP
 20 services. I think we kept Midcontinent informed of our
 21 progress through our conversations over the course of
 22 the first couple of months, and they never expressed
 23 any dissatisfaction with the way things were going to
 24 my knowledge.
 25 I believe that it appears that Midcontinent

1 MS. POLLMAN ROGERS: Excuse me. I
 2 think it was Exhibit 2, wasn't it?
 3 MR. DICKENS: I think it was 1.
 4 MS. POLLMAN ROGERS: I had them
 5 marked wrong. Go ahead.
 6 MR. SMITH: Exhibit 1. And
 7 Mr. Heiberger is currently on the stand and has
 8 been sworn, and with that, Mr. Gerdes, could you
 9 please address your status at this point in time
 10 relative to the exhibit?
 11 MR. GERDES: Mr. Hearing Examiner,
 12 my status is that I've read the exhibit. Has it
 13 been offered into evidence?
 14 MR. DICKENS: It hasn't been offered
 15 yet.
 16 MR. GERDES: All right. I've read
 17 the exhibit. I'll just wait until you offer it.
 18 MR. SMITH: Okay. Mr. Dickens, you
 19 may proceed.
 20 MR. DICKENS: Thank you.
 21 Q (BY MR. DICKENS) Mr. Heiberger, before we broke
 22 earlier today, I believe that I had asked you whether
 23 you had examined the prefiled testimony dated May 28,
 24 2004, which is labeled as ITC Exhibit 1 to see if it
 25 was an accurate -- appeared to be an accurate copy of

1 hopes to influence the Commission's decision on ITC's
 2 LNP suspension hearing by alleging that ITC engaged in
 3 bad-faith negotiations. That would conclude my
 4 opening.
 5 Q Okay. Let me ask you two further housekeeping
 6 questions. Is your testimony true and correct to the
 7 best of your knowledge?
 8 A Yes, it is.
 9 Q And if you were asked the same questions today that
 10 appear in your prefiled testimony, would your answers
 11 be the same?
 12 A Yes.
 13 MR. DICKENS: I'd like to move the
 14 admission of Exhibit ITC No. 1.
 15 MR. GERDES: We would object to
 16 Exhibit 1 to this extent. We object to and ask
 17 that it be stricken, being page 2, line 8, the
 18 sentence beginning with "Further, I will show" and
 19 ending on line 10 with the words "Interconnection
 20 Agreement" and we further move to strike page 3,
 21 lines 7 through 23, page 4 in its entirety, and
 22 page 5 through line 14 upon the grounds and for the
 23 reason that the contract, Exhibit 3, has an
 24 integration clause which states on page 18,
 25 paragraph BB, titled, entire agreement, "This

1 agreement constitutes the entire agreement between
 2 the parties and supersedes all prior oral or
 3 written agreements, representations, statements,
 4 negotiations, understandings, proposals, and
 5 undertakings with respect to the subject matter
 6 hereof," and the evidence that we've asked be
 7 stricken is therefore incompetent and irrelevant to
 8 the issues in this case.

9 MR. SMITH: Can I go through the
 10 precise lines again, Dave.

11 MR. GERDES: I'm sorry. I perhaps
 12 went too fast. Page 2, the sentence beginning on
 13 line 8 with the word "Further" and striking that
 14 sentence in its entirety. So it would go down
 15 through line 10, and it ends with the words
 16 "Interconnection Agreement."

17 And then on page 3 strike lines 7 through 23.
 18 Strike all of page 4, and strike on page 5 lines 1
 19 through 14 together with the exhibits that are
 20 referred to.

21 MR. SMITH: Do you have anything
 22 further to say on the Motion?

23 MR. GERDES: Just based on the
 24 integration agreement and therefore the evidence is
 25 incompetent and irrelevant.

1 you were this morning. The provisions that you're
 2 requesting that be stricken, those all relate to
 3 matters that happened before the agreement was
 4 signed; is that correct?

5 MR. GERDES: That's correct. They
 6 seek to set forth negotiations that were subsumed
 7 into the contract. We do not object to any
 8 evidence that ITC would seek to on the grounds just
 9 stated. We do not object to any evidence that ITC
 10 would offer as it relates to negotiations
 11 subsequent to the signing and approval of the
 12 contract.

13 MR. DICKENS: Mr. Chairman, it's my
 14 recollection from this morning that Ms. Lohnes
 15 testified as to events that occurred before the
 16 Interconnection Agreement was signed.

17 CHAIRMAN SAHR: Do you remember
 18 specifically what that was regarding?

19 MR. DICKENS: I don't. I don't
 20 remember the --

21 MS. SISAk: I believe there was a
 22 question and answer about meetings between
 23 Midcontinent and ITC and Ms. Lohnes's response
 24 referred to meetings that had occurred before the
 25 Interconnection Agreement was signed.

1 MR. SMITH: Mr. Dickens, do you have
 2 a response?

3 MR. DICKENS: Yes. I would urge you
 4 most vehemently to deny the Motion to strike. What
 5 Midco has done in this case is put the heart of
 6 this case is the issue of whether, as Mr. Gerdes
 7 puts it, ITC stonewalled Midco in negotiations.
 8 And what we have done in this testimony is outlined
 9 precisely the steps that proposes and counter
 10 proposals that went back and forth between the
 11 parties to show on that very issue that the
 12 contract clause that was negotiated contemplated
 13 that we may not wind up providing local number
 14 portability as a result of the negotiations is the
 15 very issue that Midco has put before the Commission
 16 in this case. And I'm taken aback by the Motion,
 17 quite frankly. I think that this evidence goes to
 18 the very heart of it.

19 MR. GERDES: It would be our
 20 position, your Honor, that the contract speaks for
 21 itself. It's the best evidence, and there's no
 22 ambiguity and the Parole Evidence Rule further bars
 23 this testimony.

24 CHAIRMAN SAHR: May I ask a
 25 question? And I'm trying to read quickly much like

1 MR. GERDES: I believe that was on
 2 cross-examination. The agreement was signed on
 3 November 3 by Midcontinent and November 6 by -- or
 4 excuse me, November 3 by ITC and November 20 by
 5 Midcontinent. What we're objecting to is anything
 6 before that.

7 MR. SMITH: Do we need to have
 8 Ms. Lohnes's testimony read back?

9 MR. DICKENS: The direct testimony
 10 that we filed did not address Ms. Lohnes's
 11 statements, of course, today. It does go to the
 12 heart of the case, which is what the companies
 13 negotiated between themselves.

14 I mean, this is a bad-faith bargaining case.
 15 We can't defend ourselves against a case alleging
 16 bad-faith bargaining unless we can talk about what
 17 happened in the bargaining.

18 CHAIRMAN SAHR: But doesn't the
 19 question of bad faith, doesn't that arise after the
 20 contract is signed because up until that point in
 21 time there's nothing to hinge upon an argument of
 22 good faith or bad faith, just strictly
 23 negotiations?

24 MR. DICKENS: Mr. Chairman, the
 25 position of Midco is that the contract clause we

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1 negotiated among other things requires us to
 2 provide LNP. And it's very clear based on
 3 Mr. Heiberger's testimony that Midco was aware that
 4 we weren't going to provide LNP because of the
 5 exchange of language, the negotiating positions of
 6 the parties.
 7 MR. GERDES: Well --
 8 MR. DICKENS: It's not a lay jury.
 9 The Commission is an expert panel. You're not
 10 going to be swayed by testimony a jury may or may
 11 not --
 12 CHAIRMAN SAHR: But, I mean, if it's
 13 not relevant, it's not relevant, whether we're a
 14 jury, judge, tribunal.
 15 MR. DICKENS: I agree. I think it's
 16 relevant highly relevant.
 17 MR. GERDES: But the number
 18 portability clause in the contract which was the
 19 subject of those negotiations is as it's stated in
 20 the contract and then the contract has an
 21 integration clause.
 22 So what we are operating under is the number
 23 portability language which is in the contract, and
 24 that's what they agreed to and that's what we
 25 agreed to and that's what the case is based upon.

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1 It's not based upon anything that occurred before
 2 the contract was signed because it has an
 3 integration clause.
 4 MR. SMITH: And it was signed on
 5 May 6 of 2003?
 6 MR. GERDES: December -- November 6
 7 and November 3. So the last signing you could say
 8 November 6 because that was the last date both
 9 parties signed it.
 10 I mean, what happened before that is
 11 integrated into the contract. There's an
 12 integration clause, and certainly what happened
 13 after that is fair game. We don't have any problem
 14 with that.
 15 But how can ITC say we didn't mean what we
 16 said in the contract? I mean, it's whatever the
 17 contract says.
 18 MR. DICKENS: Well, that's not our
 19 position.
 20 MR. SMITH: I'm going to sustain the
 21 objection. To me the contract is a document that
 22 at this point speaks for itself unless it's
 23 ambiguous and nobody's made that argument. And I
 24 think the relevancy here, the issue is after the
 25 contract was executed what was the conduct of the

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1 parties from that point forward.
 2 It's been offered?
 3 MR. DICKENS: Yes.
 4 MR. SMITH: With that, is that it?
 5 Is that the only objection?
 6 MR. GERDES: Well, the objection is
 7 the items we've asked to be stricken, and beyond
 8 that we don't object to the rest of the exhibit,
 9 no.
 10 MR. SMITH: Okay. With the
 11 objection sustained, ITC Exhibit 1 is admitted.
 12 MR. DICKENS: Tender Mr. Heiberger
 13 for cross-examination.
 14 CROSS-EXAMINATION
 15 BY MR. GERDES:
 16 Q Good afternoon, Mr. Heiberger.
 17 A Good afternoon.
 18 Q I'm sorry it took us so long to get to this point.
 19 A That's fine.
 20 Q Looking at your testimony you make the point on page 5
 21 at the bottom that Ms. Lohnes -- essentially you make
 22 the point at the bottom of page 5 and top of page 6
 23 that Ms. Lohnes's testimony sets forth the total
 24 communication between the parties; is that correct?
 25 A That's correct.

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1 Q And you agree that is the total communications between
 2 the parties?
 3 A That's correct.
 4 Q And would it be fair to say that except on one occasion
 5 all of those contacts were initiated by Ms. Lohnes?
 6 A That's correct.
 7 Q And from January 29 to February 24 you never called
 8 her, did you?
 9 A That's correct.
 10 Q And according to her testimony, on January 28 you left
 11 a voice mail message with her that you wanted to give
 12 her an update on the LNP issue; is that correct?
 13 A That's to the best of my knowledge, yes, or
 14 recollection, yes.
 15 Q And you talked to her on the next day?
 16 A That's correct. And I informed her at that point in
 17 time that we need to be taking some of our initial cost
 18 information to my board of directors.
 19 Q And according to her testimony, you also informed her
 20 of a board meeting coming up and at that board meeting
 21 there would be LNP issues discussed; correct?
 22 A Yes.
 23 Q When did that board meeting occur?
 24 A I believe it was February 3. It's the first Tuesday of
 25 each month.

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1 **Q** Well, wouldn't a normal person expect you to call her
 2 on February 4, 5, or 6 and tell her what transpired at
 3 that board meeting since that was the reason that you
 4 wanted to postpone the discussions?
 5 **A** You know, Ms. Lohnes and I had correspondence over
 6 those first couple of months back and forth. Yes, she
 7 may have initiated most of them, but I felt we had an
 8 ongoing dialogue that as I left the conversation that,
 9 you know, as soon as we were able to confirm all of our
 10 costs and implementation issues, then I would get back
 11 to her. And I wasn't ready at that point in time to
 12 finalize any of my costing information at that point
 13 yet.
 14 **Q** I don't see anything in her testimony that says she's
 15 waiting -- or she understands she's waiting for costs,
 16 do you?
 17 **A** No. I guess that's what I understood the conversation
 18 to be.
 19 **Q** Maybe something that you assumed?
 20 **A** I guess that was the way I thought things were to be
 21 between us or our understanding between the two of us
 22 is that as soon as I got all of my costing and
 23 implementation issues resolved and figured out, then I
 24 would get back to her.
 25 **Q** Which, of course, never did occur.

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1 **A** We got together, I think, on March 4 to discuss -- I
 2 sent her an e-mail on March 4 advising her that --
 3 giving her a heads up that after all of our initial
 4 investigation that we felt it was best for our members
 5 that we file for a petition for suspension and did so
 6 the following week and in the meantime then the Motion
 7 to Compel was filed against ITC.
 8 **Q** And what do you expect Ms. Lohnes to think when the
 9 last conversation she had with you was that you were
 10 going to get back to her with some figures, and the
 11 next thing she hears from you is that you filed a
 12 petition for suspensions or modifications with the
 13 South Dakota Public Utilities Commission?
 14 **A** I don't know that I ever stated that I was going to get
 15 back to her with some numbers, just that we were still
 16 researching what the cost and implementation issues
 17 were going to be for us. This was a totally new issue
 18 for our company and right after we got into -- after
 19 the agreement was signed we began investigating the
 20 issues as best we could. We weren't stonewalling or
 21 stalling by any means. We put a lot of time and effort
 22 into this thing in the first three or four months after
 23 that agreement was signed. And I thought I had an
 24 ongoing dialogue with Ms. Lohnes.
 25 **Q** Well, ongoing dialogue carries the connotation it's two

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1 way. You didn't have any conversation with her at all
 2 after your board meeting until you filed the petition;
 3 correct? Is that correct?
 4 **A** That's correct, yes.
 5 **Q** Thank you. Now in the Interconnection Agreement you
 6 agreed -- your company agreed to negotiate in good
 7 faith; right?
 8 **A** That's correct. And I felt we were doing so by our
 9 ongoing dialogue that we had, and the research that we
 10 were doing. We weren't just sitting around doing
 11 nothing there.
 12 **Q** How do you negotiate? Do you --
 13 **A** I would first research my costs and what all the issues
 14 are --
 15 **Q** Let me finish my question.
 16 **A** I'm sorry.
 17 **Q** How do you negotiate? Do you propose and somebody else
 18 to propose back? Is that how you do it? Or do you
 19 propose and then they reject and then you propose and
 20 they reject? Isn't it a two-way street?
 21 **A** Well, I think it is, and I thought that's what we had
 22 going between us on the different telephone calls we
 23 had, the voice mails, and the e-mails that were
 24 exchanged.
 25 **Q** You never sat down with Ms. Lohnes after that board

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1 meeting in early February and said this is what our
 2 costs show us and we think we might have to file a
 3 petition but I'd like to talk to you about it?
 4 **A** That's correct.
 5 **Q** Okay.
 6 **A** I wasn't done researching my costs and all the issues
 7 at that point in time yet. And I told her as soon as I
 8 got done doing that I would get back to her.
 9 **Q** But you never got back to her. You filed a petition.
 10 **A** On March 4 I told her that in the next week we would
 11 probably be filing a Motion -- or a petition for
 12 suspension and modification, yes.
 13 **Q** Did you ever ask her about interim number portability,
 14 whether she'd agree to that?
 15 **A** No. The first I had ever really heard of interim
 16 number portability is through Tom Simmons' rebuttal
 17 testimony is when it came out.
 18 **Q** That's the first time you ever heard of interim number
 19 portability?
 20 **A** That they wanted to talk about it, yes.
 21 **Q** Well, just a minute. The contract that you negotiated
 22 doesn't talk about interim or long-term number
 23 portability, does it?
 24 **A** Not to my recollection.
 25 **Q** It just talks about LNP, local number portability?

1 A Right.

2 Q All right. And they wanted number portability however

3 they could get it. Isn't that a reasonable way to

4 interpret that contract?

5 A I would have thought they would have been more

6 specific.

7 Q You weren't specific, were you?

8 A I tried to negotiate as best as I could. I thought we

9 had dialogue going on, honest to God.

10 Q Well, Mr. Heiberger, I want to point you to your

11 testimony, page 8, starting on line 7, question, "After

12 ITC informed Midcontinent that ITC would file a

13 petition for suspension or modification of LNP

14 requirement, did Midcontinent contact you for further

15 negotiations in connection with LNP in the Webster

16 exchange?" Answer, "No. Since ITC informed

17 Midcontinent that it would file a petition for

18 suspension or modification Midcontinent has not

19 contacted ITC for further negotiations in connection

20 with LNP in the Webster exchange."

21 Did you honestly think they would further

22 contact you after a petition is filed with the Public

23 Utilities Commission?

24 A Not out of the realm or the scope of things. Yeah. I

25 thought they could certainly come back and ask for

1 further negotiations.

2 Q If you were on the other side of that situation and

3 your opponent filed a petition with the Commission,

4 wouldn't you think that it's out of your hands and now

5 that other party has decided to put that question in

6 the hands of the Commission? Isn't that a reasonable

7 conclusion a person could reach?

8 A Not in my mind.

9 Q And then in your next question and answer you talk

10 about "I concluded that the real purpose of

11 Midcontinent's Motion to Compel is not to compel ITC to

12 negotiate because if negotiation is what Midcontinent

13 really wanted, I would expect them to contact me."

14 You're talking about after the petition was filed;

15 right?

16 A That's correct.

17 Q Well, certainly you didn't expect Mary Lohnes to call

18 you after the petition was filed, did you?

19 A She certainly could have, yes.

20 Q Isn't this a judicial proceeding? Would you not expect

21 your lawyer to call her lawyer?

22 A Never been through one of these before, I guess,

23 Mr. Gerdes, so I didn't know what to expect.

24 Q Okay. Once you determined that you couldn't provide

25 long-term number portability, why didn't you come

1 forward and order interim number portability?

2 MR. DICKENS: Excuse me. I want to

3 make sure I understand. Did you ask him why he

4 didn't order?

5 MR. GERDES: Why he didn't offer

6 interim number portability.

7 A I guess I never thought of the option, to be honest

8 with you.

9 Q Well, you expected her to give you a call?

10 A Yeah.

11 Q Why couldn't you give her a call?

12 A I thought we had good dialogue going on with the whole

13 proceedings over the three months.

14 Q Mr. Heiberger, if you had such a good dialogue going

15 on, why couldn't you call her?

16 A I sent her an e-mail and told her that we were going to

17 be filing and never heard back from her and thought

18 that in your opinions things were just going to be

19 settled at the Commission.

20 Q Did you send her an e-mail saying we would be filing

21 and, oh, by the way, feel free to contact me if you

22 want to negotiate further?

23 A No, not that I can recall, no.

24 Q You just said you're filing.

25 A Yes. That's correct.

1 MR. GERDES: No further questions.

2 MR. SMITH: Ms. Wiest.

3 CROSS-EXAMINATION

4 BY MS. WIEST:

5 Q Mr. Heiberger, I believe you state in your testimony if

6 you look on page 8, line 6 that you are prepared to

7 discuss interim LNP with Midcontinent. Could you

8 explain the cost differences between interim and

9 permanent LNP? Have you looked into it?

10 A My staff has looked into the possibility of going

11 forward with the local interim number portability. The

12 software is basically in place. It's a call-forwarding

13 service basically that would be performed on a number

14 that moved from ITC to Midcontinent. So basically most

15 of the costs are already assumed or in place. So no

16 additional costs would be incurred other than the

17 transactions of handling the processes back and forth,

18 being notified, so on and so forth. But the switch

19 costs I believe are all in place.

20 Q And so can interim local number portability be

21 implemented fairly easily then?

22 A It could, yes.

23 Q And then do you have Mr. Simmons' testimony in front of

24 you?

25 A I do not.

1 Q I thought it was marked up there. Maybe not.
 2 A Yes. Yes, I do.
 3 Q Okay. Could you go to page 4 of his testimony.
 4 A Sure.
 5 Q If you look there on line 7, he talks about the
 6 characteristics of long-term permanent number
 7 portability and then a little bit farther on he talks
 8 about interim number portability.
 9 Would you agree with his description of the
 10 characteristics of permanent versus interim? Do you
 11 disagree with anything he states there as opposed to
 12 some of the drawbacks with interim number portability?
 13 A If I may read it quick here.
 14 Q Go ahead.
 15 (Witness examines document)
 16 A Yes. I would agree with what he's stated here.
 17 Q Would you agree that interim number portability would
 18 be a temporary solution to the problem?
 19 A Temporary solution until such time that long-term
 20 portability could become feasible for my customers.
 21 MS. WIEST: Thank you. That's all
 22 I have.
 23 MR. SMITH: Mr. Dickens.
 24 MR. DICKENS: Thank you. I just
 25 have a couple of questions, Mr. Heiberger.

1
 2 REDIRECT EXAMINATION
 3 BY MR. DICKENS:
 4 Q When Mr. Gerdes was asking you some questions he asked
 5 if you were specific in your discussions with
 6 Ms. Lohnes as to whether LNP was -- interim number
 7 portability or local number portability generally. Do
 8 you remember that exchange?
 9 A Could you repeat it again, Ben?
 10 Q Yes. When Mr. Gerdes was cross-examining you he said
 11 you weren't specific, were you, as to whether you were
 12 discussing interim number portability or local number
 13 portability. Do you recall that?
 14 A I don't recall a conversation about interim number
 15 portability. I always assumed we were talking
 16 long-term portability.
 17 Q Well, I guess this will take care of my remaining
 18 questions. Would you expect Midco to know its own
 19 business needs better than you know their business
 20 needs?
 21 A Certainly.
 22 MR. GERDES: Objected to as
 23 leading.
 24 Q Who would you expect to know better their business
 25 needs?

1 A I would expect Midco to know their business needs
 2 better than I.
 3 MR. DICKENS: Thank you.
 4 REXCROSS-EXAMINATION
 5 BY MR. GERDES:
 6 Q Mr. Heiberger, I understood you to say that there would
 7 be no additional cost to implement interim number --
 8 excuse me, interim local number portability for
 9 Midcontinent; is that correct?
 10 A Well, I don't know what costs they would incur. I'm
 11 just saying that the switch feature to make interim
 12 number portability is included in the Webster switch at
 13 this point in time. The cost for the processes and the
 14 paperwork back and forth would be something that I
 15 haven't addressed to my staff as to what those costs
 16 would be at this point.
 17 Q Well, let me ask you this question. Are you willing
 18 today to implement interim local number portability
 19 with Midcontinent?
 20 A I would certainly entertain the discussion and
 21 negotiation of deploying interim number portability
 22 certainly.
 23 Q What are we talking about when we talk about
 24 negotiation? Are we going to sit down at a table and
 25 exchange ideas?

1 A Well, I think the processes, the procedures that we
 2 have to put in place will have to be addressed
 3 certainly.
 4 Q Of course you do have an Interconnection Agreement with
 5 Midcontinent; is that correct?
 6 A That's correct.
 7 Q And you're exchanging traffic, are you not?
 8 A That's correct. But for the paperwork of the customer
 9 switching and knowing what we needed to forward the
 10 number, I guess that's the paperwork I'm talking about.
 11 Q Well, but that's a relatively insignificant item, is it
 12 not?
 13 A I would -- I'm not sure what the costs would be at this
 14 point in time.
 15 MR. GERDES: You looked over at
 16 some hand signals from your lawyer. What was your
 17 lawyer signaling to you?
 18 MS. SISK: I apologize. I was not
 19 signaling. Actually I was signaling to --
 20 MR. GERDES: You were signaling to
 21 shut up, weren't you?
 22 MR. DICKENS: That's out of line.
 23 She wasn't doing that.
 24 MR. GERDES: That's all I have.
 25 MR. SMITH: Ms. Wiest.

1 MS. WIEST: I have nothing further.
 2 MR. SMITH: Commissioners?
 3 VICE CHAIR HANSON: Mr. Heiberger,
 4 was it clear to you that Midcontinent was intent on
 5 scheduling a meeting? Was there any question?
 6 THE WITNESS: I think that they
 7 wanted to know where we were at with the progress
 8 that we were making with our research in
 9 investigating the costs and the processes, and I
 10 tried to keep her informed as to -- and we're still
 11 pursuing things. We don't have all the issues
 12 identified and addressed yet at this point in time.
 13 And as far as an in-person meeting, again I
 14 thought we had dialogue going as far as the need
 15 for an in-person meeting. Until I had gotten all
 16 of my research done, I didn't see any need for
 17 getting together at that point in time yet.
 18 VICE CHAIR HANSON: Thank you. For
 19 your answer. However, did it appear to you that
 20 Ms. Lohnes was intent upon having a meeting,
 21 regardless of whether you felt it necessary or not?
 22 THE WITNESS: Yes. Through her
 23 e-mails I guess she was inquiring as to where we
 24 were at and can we get together at some point in
 25 time. I kept telling her that not until I know

1 where we're at with our costs and all the other
 2 issues that are involved.
 3 VICE CHAIR HANSON: Forgive me if
 4 this -- I'll wait for -- and you may want to pause
 5 when I ask the question. I'm not sure on some
 6 questions whether or not I can ask.
 7 Do you believe it's possible for Midcontinent
 8 to compete with ITC without having this?
 9 THE WITNESS: Certainly. They're
 10 doing it now.
 11 VICE CHAIR HANSON: Okay. So
 12 without LNP they can compete?
 13 THE WITNESS: Yes. And if I may --
 14 VICE CHAIR HANSON: Certainly.
 15 THE WITNESS: Can I go back to stuff
 16 that was before November 6? No?
 17 VICE CHAIR HANSON: As it relates to
 18 that question but not as it relates to determining
 19 the contract.
 20 THE WITNESS: They stated at the
 21 May 1 meeting in 2003 that, you know, they wanted
 22 to interconnect to us and it was their intent to
 23 order up an NXX and at some point in time they may
 24 want LNP, they would get back to us and talk to us
 25 about that. So they were off running getting their

1 own NXX to compete with us, and that's what they're
 2 doing today.
 3 VICE CHAIR HANSON: Thank you.
 4 CHAIRMAN SAHR: Good afternoon,
 5 Mr. Heiberger.
 6 THE WITNESS: Good afternoon.
 7 CHAIRMAN SAHR: When did you file
 8 for the petition for LNP waiver? And actually I
 9 think it's in your direct testimony prefiled, if
 10 you have that in front of you, page 7.
 11 THE WITNESS: It was March 4.
 12 CHAIRMAN SAHR: March 4?
 13 THE WITNESS: No. March 11, I
 14 believe is when it was. Is that right?
 15 CHAIRMAN SAHR: March 11?
 16 THE WITNESS: I believe that's
 17 correct, yes.
 18 CHAIRMAN SAHR: And then on page 7,
 19 line 17.
 20 THE WITNESS: Page what? I'm sorry.
 21 CHAIRMAN SAHR: Page 7, line 17 --
 22 or 16 and 17. When did you inform Midcontinent --
 23 THE WITNESS: On March 4.
 24 CHAIRMAN SAHR: I'm trying to figure
 25 out if -- it says Mary in there so I was trying to

1 figure out if that was March or May.
 2 THE WITNESS: It was March 4. So I
 3 advised Mary before we filed the petition that
 4 that's what we thought we were going to need to do
 5 and subsequently filed it a week later. Between
 6 the time I told her that we were going to file and
 7 we filed, then they filed a Motion to Compel.
 8 CHAIRMAN SAHR: Thank you. I was
 9 trying to get the time line down, and I couldn't
 10 figure out Mary. I wasn't sure if that was March
 11 or May. I think I could have asked this question
 12 of Ms. Lohnes as well, but the contract appears to
 13 be fairly open-ended about parties being able to
 14 enforce their current rights or existing rights or
 15 whatever language is used with this Commission or
 16 the FCC or the court system; is that correct?
 17 THE WITNESS: That's correct.
 18 CHAIRMAN SAHR: And it looks to me
 19 like one of the -- the duty of good faith extended
 20 for how many months?
 21 THE WITNESS: I believe it was six
 22 months.
 23 CHAIRMAN SAHR: And you signed this
 24 agreement in early November. Were you still
 25 negotiating in good faith after March 4?

1 THE WITNESS: We were open to
 2 negotiations, certainly.
 3 CHAIRMAN SAHR: And is it your
 4 contention that the negotiations should remain open
 5 or -- I mean, at this point in time do you still
 6 feel that the negotiations are ongoing?
 7 THE WITNESS: Well, as they would
 8 suggest through Tom Simmons' testimony that they
 9 would be interested in doing interim number
 10 portability, I would certainly be interested in
 11 discussing that as an option to deploying that
 12 service.
 13 CHAIRMAN SAHR: And if that was
 14 something -- well, let me strike that. That
 15 appears to be a lower cost solution, at least from
 16 what has been prefiled.
 17 Would you have an opinion as to whether or not
 18 there might be something other than cost that would
 19 give you concern about going with the interim
 20 portability, or is your main objections to going
 21 with the portability is that just based on cost?
 22 THE WITNESS: It's based on cost for
 23 my customers as far as the long-term portability
 24 certainly. The interim, again, the software is in
 25 place. We need to work out some procedures there

1 to put in interim portability, but I would be open
 2 to negotiating that service.
 3 CHAIRMAN SAHR: And as a Commission
 4 that has been given an issue that's I guess an
 5 and/or type issue, we're looking at whether or not
 6 the negotiation is going on in good faith and/or
 7 whether or not we should order portability. If we
 8 were to find that the interim portability were
 9 appropriate in this situation, is there any reason
 10 why we should allow the parties to continue to
 11 negotiate going forward?
 12 THE WITNESS: To negotiate the
 13 long-term portability?
 14 CHAIRMAN SAHR: No. The interim.
 15 THE WITNESS: No. I don't see any
 16 issue with that as to not being able to negotiate
 17 interim.
 18 CHAIRMAN SAHR: We're going to cover
 19 the long-term portability financial side of things
 20 later; is that correct?
 21 THE WITNESS: That's correct.
 22 CHAIRMAN SAHR: I'm just trying to
 23 keep it all straight on when we're handling that
 24 part of it. With that in mind, I have no further
 25 questions. Thank you very much.

1 COMMISSIONER BURG: Let me ask
 2 just one. Do you feel that if you developed an
 3 interim agreement, that this would prohibit you
 4 from the other relief offered in legislation to
 5 pursue the delay?
 6 I know that might be a legal question. If you
 7 feel it is, say so.
 8 THE WITNESS: I don't think it would
 9 prohibit us myself, no.
 10 MR. SMITH: Is that it from the
 11 Commissioners?
 12 Mr. Dickens, do you have any questions
 13 following on the Commissioners' questions?
 14 MR. DICKENS: I think I have one
 15 redirect based on something Mr. Gerdes got into.
 16 MR. SMITH: Please proceed.
 17 REDIRECT EXAMINATION
 18 BY MR. DICKENS:
 19 Q I think it was Mr. Gerdes that was discussing with you,
 20 Mr. Heiberger, Ms. Lohnes's interest in having a
 21 meeting. Have you been involved in other negotiations
 22 in your capacity as manager of ITC?
 23 A Certainly.
 24 Q Have you always been involved in the physical meeting
 25 to accomplish what you would consider a negotiation?

1 A No. We've always -- there have been physical meetings
 2 and then, of course, conference calls.
 3 Q Thank you.
 4 A E-mail correspondence during that whole process.
 5 MR. DICKENS: Thank you.
 6 MR. GERDES: No further questions.
 7 MR. SMITH: Ms. Wiest?
 8 MS. WIEST: Nothing.
 9 MR. SMITH: You're excused.
 10 Ms. Rogers, please call your next witness.
 11 CHAIRMAN SAHR: Can we go off the
 12 record just a second.
 13 (Discussion off the record)
 14 MS. POLLMAN ROGERS: We have no mor
 15 witnesses.
 16 MR. SMITH: Mr. Gerdes.
 17 MR. GERDES: We rest.
 18 MS. POLLMAN ROGERS: We rest.
 19 MR. SMITH: Ms. Wiest.
 20 MS. POLLMAN ROGERS: Just a minute.
 21 There was one other issue. I'm sorry. We had
 22 intended to offer Exhibit No. 2, which was our
 23 filed opposition to the Motion to Compel. I can
 24 put Mr. Heiberger back on if you have an objection
 25 to that.

1 MR. GERDES: You're talking about
 2 the pleading?
 3 MS. POLLMAN ROGERS: Yes. Our filed
 4 opposition. Is that part of the record?
 5 MR. GERDES: I believe that's part
 6 of the record already.
 7 MS. POLLMAN ROGERS: Then I think
 8 that's taken care of already.
 9 MR. SMITH: Hold it. That
 10 opposition, that's in another case, isn't it?
 11 MS. POLLMAN ROGERS: No. We filed a
 12 written opposition to their Motion.
 13 MR. SMITH: Oh, the original
 14 opposition to their Motion. I'm sorry. I had an
 15 issue this morning in my head.
 16 Mr. Gerdes.
 17 MR. GERDES: I believe that's part
 18 of the case already.
 19 MR. SMITH: Well, it's part of the
 20 Docket record. It's part of the record. It's not
 21 evidence. If it's admitted here, it's going to
 22 be -- she's asking to offer it as evidence.
 23 MR. GERDES: Well, I don't know if
 24 it's under oath, and I don't know if it's a
 25 pleading, it's not competent to be evidence.

1 MR. SMITH: It is a pleading. I
 2 think what she's asking is that it be introduced to
 3 prove the truth of what's asserted therein.
 4 MR. GERDES: Well, I guess I need to
 5 look at it. Just a second. I'm sorry.
 6 (Discussion off the record)
 7 MR. GERDES: I would object to it
 8 being admitted as evidence. It's nothing more than
 9 a pleading, any more than our Motion is evidence,
 10 and we'd object. It's just a pleading, and it's
 11 not evidence. It's not competent as evidence.
 12 It's without foundation as evidence. It's not
 13 evidence. So we object.
 14 MR. SMITH: Ms. Wiest, do you have a
 15 position?
 16 MS. WIEST: I agree with Mr. Gerdes.
 17 MR. SMITH: Any comment from
 18 Ms. Rogers?
 19 MS. POLLMAN ROGERS: Could we have
 20 the opportunity to recall Mr. Heiberger to
 21 establish some foundation to some of the things
 22 that are in that opposition?
 23 MR. SMITH: Unless the Commissioners
 24 have an objection, I don't, you may recall
 25 Mr. Heiberger.

1 MR. GERDES: I mean, if it's to
 2 provide foundation to the facts that are alleged in
 3 the opposition, Mr. Heiberger has already testified
 4 and been dismissed as a witness. I suppose if you
 5 want to recall it, but I mean -- I don't know what
 6 it is in there that needs foundation. I might
 7 stipulate to it, counsel, but right now that's a
 8 pleading.
 9 MS. POLLMAN ROGERS: I don't have a
 10 copy.
 11 (Discussion off the record)
 12 MS. POLLMAN ROGERS: In particular,
 13 Mr. Gerdes, I am looking at the exhibits, and
 14 Exhibit 1 is the LNP time line.
 15 MR. HARRINGTON: What dates in there
 16 are not already in the record?
 17 MR. GERDES: I believe that that's
 18 cumulative of Ms. Lohnes's testimony which
 19 Mr. Heiberger has agreed with.
 20 MS. POLLMAN ROGERS: But I would
 21 like this specific time line, this exhibit to be
 22 before the Commission to be considered as evidence
 23 in this Docket. If you say that these dates are
 24 already in there, then you should have no objection
 25 to it.

1 I believe the Commission can give it such
 2 weight as it deems appropriate, Mr. Gerdes, but I'd
 3 like to have this admitted into the record.
 4 MR. GERDES: I don't have any
 5 problem -- it's incomplete. It doesn't have all
 6 the dates in it that are in Mary Lohnes's
 7 testimony, but with the understanding that it's
 8 incomplete and that the first entry can either be
 9 believed or not based on the testimony that's
 10 already in the record, I would have no objection to
 11 marking it as an exhibit and introducing it.
 12 MR. SMITH: Are we talking the
 13 entirety of --
 14 MR. GERDES: Just the exhibit that
 15 says LNP time line.
 16 MS. POLLMAN ROGERS: There is an
 17 affidavit of Mr. Heiberger attached to that too.
 18 MR. GERDES: That's fine.
 19 MS. POLLMAN ROGERS: Thank you.
 20 MR. SMITH: Should we have -- so
 21 that I understand then, should we amend the exhibit
 22 by removing the pages that don't pertain?
 23 MS. POLLMAN ROGERS: We can just
 24 remark -- or it would be contained in that exhibit
 25 or we can just remark these two pages, whichever

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1 you would prefer.

2 MR. GERDES: I don't know what

3 exhibit you're talking about, but I mean I'd just

4 mark the two pages we're talking about.

5 MR. SMITH: I would rather do that.

6 I would rather have the exhibits reformed up there

7 to reflect that we're just talking about the LNP

8 time line, two pages. We'll take care of that in a

9 minute.

10 Assuming that, let me ask you this. The

11 exhibit will not contain then this series of

12 e-mails, the e-mail exchange that ensues?

13 MS. POLLMAN ROGERS: The e-mails are

14 in actuality follow-up to many of the things

15 contained in the LNP time line.

16 MR. SMITH: Will the exhibit contain

17 the e-mails or not or just the two pages?

18 MR. GERDES: We're talking about the

19 two pages.

20 MR. SMITH: The two pages?

21 MR. GERDES: That's what I

22 stipulated to.

23 MR. SMITH: Ms. Wiest, do you have a

24 position?

25 MS. WIEST: I thought they just

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1 agreed to the two pages, the exhibit with the

2 attached affidavit, Exhibit 1 attached affidavit.

3 MR. SMITH: Ms. Rogers, are you then

4 offering the two pages as ITC Exhibit 2?

5 MS. POLLMAN ROGERS: Yes.

6 MR. SMITH: Exhibit 2 as so amended

7 is admitted.

8 (Exhibit 2 is marked for identification)

9 MR. SMITH: Ms. Rogers, the exhibit

10 has been admitted. Do you have anything further?

11 MS. POLLMAN ROGERS: No. Thank you.

12 MR. SMITH: Does anyone else have

13 anything further?

14 MR. GERDES: No, your Honor.

15 MR. SMITH: With that, the

16 evidentiary portion of the hearing in TC03-192 is

17 adjourned.

18 Are there any other matters related to this

19 case that the parties would like to bring up at

20 this time? I'll tell you my assumption is that the

21 briefing, et cetera, related to this case will sort

22 of be on a time line that's combined with the LNP

23 cases.

24 Is that a reasonable understanding?

25 MS. POLLMAN ROGERS: Yes.

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1 MR. SMITH: With that --

2 MR. GERDES: I assume that we will

3 brief this separately, though.

4 MR. SMITH: Brief them separately.

5 Let me ask the question maybe more directly. Do

6 you want to do closing arguments now, or do you

7 want to do them at the end of the briefing?

8 MR. GERDES: I only want to do a

9 closing argument if Ben Dickens or Darla Rogers

10 does a closing argument.

11 MR. SMITH: Anything further,

12 Ms. Rogers?

13 MS. POLLMAN ROGERS: Can I have just

14 a second, please.

15 MR. SMITH: Go ahead.

16 (Discussion off the record)

17 MS. POLLMAN ROGERS: We'll include

18 closing in briefs.

19 MR. SMITH: Closing with briefs.

20 MS. POLLMAN ROGERS: Yes.

21 MR. SMITH: With that, the hearing

22 in TC03-192 is adjourned.

23 (The hearing concluded at 2:10 p.m.)

24 MR. SMITH: The LNP suspension

25 Dockets hearing is reconvened. Today is July 1,

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1 2004. It's a quarter to 9:00, and this is the time

2 and place set for hearing in Santel, which is

3 Santel Communications Cooperative, Inc., which is

4 TC04-038, and it is also the time that was set for

5 the continued hearings in ITC, which is -- the ITC

6 suspension Docket, which is TC04-054, and James

7 Valley Telephone Company, which is, I think,

8 04-077. Is that right?

9 MR. GERDES: Yes.

10 MR. SMITH: 077. We're first going

11 to consider the 054, TC04-054, which is Interstate

12 Telephone Company, and as I understand it, this is

13 also going to implicate Docket TC03-192, which is

14 the contract case between Midco and ITC.

15 And I'm not sure which of the parties -- I

16 guess, Ben, do you want to lead off for ITC?

17 MR. DICKENS: Well, basically I'll

18 defer to Mr. Gerdes. We have reached an agreement

19 and Mr. Gerdes can summarize the terms if he would

20 like.

21 MR. GERDES: Mr. Chairman, members

22 of the Commission, Mr. Smith, the parties have been

23 negotiating throughout the course of these

24 hearings, and just as a matter of information, we

25 have entered into a settlement agreement in the 192

1 Docket. It has been signed, and it will be filed
 2 with the Commission in the usual way, that is
 3 original and 10 copies to be filed. I have copies
 4 and so does Mr. Dickens. We both have copies
 5 available for anybody who wants to see the
 6 agreement now. But just as a matter of
 7 information, we have settled that Docket, and the
 8 agreement will be filed.
 9 And then we have marked Exhibits 6, 7, and 8,
 10 which are prepared prefiled testimony of Jerry
 11 Heiberger, Mary Lohnes, and Tom Simmons, and it is
 12 our stipulation that these exhibits may be admitted
 13 into the 054 Docket.
 14 MR. SMITH: Is Lohnes No. 7?
 15 MR. GERDES: Heiberger is 6, Simmons
 16 is 7, and Lohnes is 8. May that be so stipulated?
 17 MR. DICKENS: Yes. And we have one
 18 further stipulation.
 19 MR. GERDES: I think we need to hear
 20 from Mr. Wieczorek.
 21 MR. WIECZOREK: I have no objection.
 22 Some of it was just handed to me, but I sped read
 23 it and I have no objections to it being admitted.
 24 MR. COIT: I have no objections on
 25 that either.

1 MS. AILTS WIEST: No objection.
 2 MR. SMITH: Okay. ITC Exhibits 6,
 3 7, and 8 in Docket TC04-054 are admitted.
 4 MR. GERDES: Secondly, we stipulate
 5 that the stricken part of Jerry Heiberger's
 6 testimony in the 192 Docket may be -- well, strike
 7 that.
 8 It is our stipulation that all of the evidence
 9 in the 192 Docket, including that portion of Jerry
 10 Heiberger's testimony which was stricken, may be
 11 admitted into evidence in the 054 Docket.
 12 So stipulated?
 13 MR. DICKENS: Yes.
 14 MR. WIECZOREK: No objection.
 15 MR. COIT: No objection.
 16 MS. AILTS WIEST: No objection.
 17 MR. SMITH: Okay. Where is that?
 18 MR. GERDES: Well, there would be
 19 the written testimony --
 20 MR. SMITH: That's ITC 1 in the 192
 21 Docket.
 22 MR. GERDES: Yes. And plus it's
 23 perhaps partially redundant but we're also talking
 24 about -- we're talking about both direct and cross
 25 on all three witnesses, that is Tom Simmons, Mary

1 Lohnes, and Jerry Heiberger.
 2 MR. SMITH: What you stipulated to
 3 is that all of the testimony in the 192 Docket be
 4 admitted?
 5 MR. GERDES: Right.
 6 MR. SMITH: The entire evidentiary
 7 record in the 192 Docket will be admitted into the
 8 054 Docket.
 9 MR. GERDES: Right. Including the
 10 portion of Jerry Heiberger's testimony that was
 11 stricken.
 12 MR. SMITH: Right.
 13 MR. WIECZOREK: I do have one
 14 question. Was there testimony beyond Jerry
 15 Heiberger's submitted testimony on behalf of ITC in
 16 the 192 Docket?
 17 MR. DICKENS: No.
 18 MR. WIECZOREK: Just Heiberger? No
 19 objection then.
 20 MR. SMITH: Do the other parties
 21 agree to that stipulation?
 22 MS. AILTS WIEST: Yes.
 23 MR. COIT: Yes.
 24 MR. SMITH: Okay. Then the
 25 evidentiary record in 192 will be admitted as

1 evidence into Docket TC04-054.
 2 MR. GERDES: And then finally we
 3 stipulate that if Jerry Heiberger were called and
 4 testified here today, he would testify that four
 5 ITC customers have changed their service to
 6 Midcontinent in the Webster Docket since March of
 7 2004.
 8 MR. COIT: Yes.
 9 MR. WIECZOREK: No objection.
 10 MR. COIT: No objection.
 11 MS. AILTS WIEST: No objection.
 12 MR. SMITH: So stipulated.
 13 MR. GERDES: I think that is it, is
 14 it not?
 15 MR. DICKENS: Yes. I think that's
 16 everything.
 17 MR. GERDES: With that, Midcontinent
 18 rests in the 054 Docket.
 19 MR. DICKENS: We rest in the 054
 20 Docket. And I guess we'll file the stipulation
 21 with the Commission.
 22 MR. SMITH: Did you have any -- and
 23 you don't have anything further relative to that,
 24 Mr. Wieczorek, do you?
 25 MR. WIECZOREK: No, I don't.

1 MR. SMITH: Okay. As I understand
 2 it then, the 054 Docket with respect to Midco and
 3 ITC has not been resolved as of this point?
 4 MR. GERDES: That's correct. We
 5 would still intend to brief as will ITC.
 6 MR. SMITH: Okay. Thank you.
 7 Mr. Wieczorek, another preliminary matter. We were
 8 to have the James Valley stipulation presented this
 9 morning. As I understand it, there's been a
 10 technical glitch develop.
 11 MR. WIECZOREK: Yeah. We've flowed
 12 the language back and forth and we have essentially
 13 everything agreed to but there's one technical
 14 question that Mr. Cremer had for his client and his
 15 client was unavailable yesterday to answer it.
 16 During my phone conference with Mr. Cremer
 17 yesterday over the language I informed him that the
 18 Commission was looking at approving CRST on the
 19 20th, and he asked me on behalf of him and
 20 Western Wireless to represent that we don't foresee
 21 having any problems with presenting on the 20th,
 22 the same time you look at CRST.
 23 MR. SMITH: Is that acceptable to
 24 the Commissioners?
 25 VICE CHAIR HANSON: Yes.

1 CHAIRMAN SAHR: Yes.
 2 MR. SMITH: We'll schedule that for
 3 presentation of the Commission on July 20 in
 4 connection with -- the Docket number on that is
 5 TC04-077.
 6 Does that conclude all the preliminary matters
 7 then, Mr. Dickens?
 8 MR. DICKENS: With respect to 054, I
 9 have a couple of other housekeeping matters I'd
 10 like to take care of before I slip the surly bonds
 11 of --
 12 MR. WIECZOREK: South Dakota?
 13 MR. DICKENS: I've got an order of
 14 the Minnesota Commission --
 15 MR. WIECZOREK: I think it's a
 16 letter.
 17 MR. DICKENS: Is it a letter? My
 18 memory has started slipping too early in the
 19 morning.
 20 It is a letter dated June 23 --
 21 MR. SMITH: '04?
 22 MR. DICKENS: Yes. June 23, '04
 23 that indicates that several companies including
 24 Hills Telephone Company, Sioux Valley, and
 25 Interstate Telephone Cooperative along with the

1 Minnesota company Winnebago Telephone should not
 2 have been included. It's a letter from counsel
 3 that these companies should not have been included
 4 in the MIC Docket that received some attention
 5 earlier in the case. And we would like to have
 6 this marked and received into evidence.
 7 MR. WIECZOREK: It came up in at
 8 least a couple different Dockets but it's my
 9 understanding under what we've agreed to is
 10 anything marked as an exhibit in one Docket can be
 11 used in another. So it came up in ITC first so I
 12 think it makes sense to mark it as an ITC exhibit.
 13 MR. SMITH: That will be ITC 9.
 14 (Exhibit ITC 9 is marked for identification)
 15 MR. WIECZOREK: The Commission might
 16 recall last week Ms. Rogers brought this up towards
 17 the end of the week and my only request was we get
 18 one stamp filed with the Commission. This is stamp
 19 filed with the Minnesota Commission and rather than
 20 the Commissioners taking judicial notice
 21 Mr. Dickens and I talked about it and thought it
 22 would be easier to have it marked into evidence so
 23 the record would be complete with that into
 24 evidence.
 25 MR. DICKENS: I further have

1 corrected exhibits from Mr. Bullock, and I
 2 understand these were e-mailed to you, Tal --
 3 MR. WIECZOREK: I believe so.
 4 MR. DICKENS: I'd like to offer that
 5 as an ITC Docket. It would be Exhibit No. 9.
 6 MR. SMITH: Is there objection to
 7 ITC Exhibit 9?
 8 MR. WIECZOREK: I have none.
 9 MR. COIT: No objection.
 10 MS. AILTS WIEST: No objection.
 11 MR. SMITH: ITC 9 is admitted.
 12 MR. GERDES: No objection.
 13 MR. DICKENS: Then I have a
 14 corrected sheet from Mr. Bullock that he indicated
 15 he would supply. As you may recall he made some
 16 corrections on the stand to his numbers and he has
 17 supplied corrected exhibits for Alliance, Golden
 18 West, and Valley Telephone. It's a three-page
 19 exhibit. And I'll have to figure out with Cheri
 20 how we marked that.
 21 (Discussion off the record)
 22 MR. WIECZOREK: It would be my
 23 preference since it actually amends exhibits that
 24 are part of his testimony to mark it as a Bullock
 25 exhibit. I think it would be easier to track it

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1 that way.

2 MR. SMITH: Just call it Bullock 3?

3 MR. WIECZOREK: If nobody else has

4 an objection.

5 MR. SMITH: I think the last I've

6 got mark -- and if there is particularly -- Bullock

7 1 is Bullock's introductory direct testimony.

8 Bullock 2 is his rebuttal, which was common to all

9 companies. Whatever you want to do.

10 MR. COIT: I think that makes sense.

11 MR. SMITH: Call it Bullock 3.

12 MR. WIECZOREK: Yeah. He did have

13 that spreadsheet, which I believe was TRB 1 that

14 this would then modify those numbers on that

15 spreadsheet.

16 MR. SMITH: Was that an exhibit?

17 MR. WIECZOREK: That was an exhibit

18 to his rebuttal testimony.

19 MR. SMITH: It would definitely make

20 sense to call it 3.

21 MR. WIECZOREK: That was the one he

22 operated on and said this change should be this

23 change.

24 MR. DICKENS: Yeah. It relates to

25 Exhibit 3 which is why it's labeled in that corner.

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1 And I'd move the admission of that.

2 MR. WIECZOREK: No objection.

3 MR. COIT: No objection.

4 MS. AILTS WIEST: No objection.

5 MR. SMITH: Bullock 3 is admitted.

6 (Exhibit Bullock 3 is marked for identification)

7 MR. DICKENS: Finally, we have

8 corrected exhibits and a piece of supplemental

9 testimony from Mr. De Witte that he indicated to

10 staff -- he indicated to staff he would supply a

11 corrected schedule, I believe; is that right?

12 MR. DEWITTE: Yes.

13 MR. DICKENS: That he would supply a

14 corrected schedule for the changes he's made, and

15 he also, even though I don't think he was requested

16 by staff, he also prepared a narrative of the

17 changes that just explains in English what the

18 changes are and it's six pages long. And I'd like

19 to have this marked as an exhibit also. And that

20 would be for the cases Mr. De Witte appeared in,

21 which is Swiftel, Interstate, James Valley, Santel,

22 Stockholm-Strandburg, Venture Communications, and

23 West River.

24 (Discussion off the record)

25 (Exhibits ITC 4A and 4B are marked for

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1 identification)

2 MR. DICKENS: With that, I would

3 move the admission of ITC 4A and 4B and

4 Mr. De Witte is present if anyone wants to question

5 him about the supplemental exhibits.

6 MR. GERDES: I have no objections.

7 MR. WIECZOREK: I have no objections

8 but would like to ask a couple of clarifying

9 questions. We were only given this information 10

10 minutes before we started and Mr. De Witte was kind

11 enough to sit and answer some questions for me but

12 I'd like to clarify a couple of things on the

13 record and I can either do that when he's on for

14 Santel or we can put him on now.

15 MR. SMITH: Do you care, Jeff?

16 MR. LARSON: No, I don't care if you

17 want to do it now.

18 MR. SMITH: Have the exhibits been

19 offered?

20 MR. DICKENS: Yes.

21 MR. SMITH: Is there an objection to

22 receiving the exhibits, first of all?

23 MR. WIECZOREK: Not as long as I get

24 to ask a couple of questions, I have no objections.

25 MS. AILTS WIEST: No objections.

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1 MR. COIT: No objections.

2 MR. SMITH: ITC Exhibits 4A and 4B

3 are admitted. Does that conclude your submissions

4 this morning, Mr. Dickens?

5 MR. DICKENS: Yes. Thank you very

6 much.

7 MR. SMITH: You're welcome.

8 Mr. Wieczorek, please, you may call Mr. De Witte

9 then. Are you ready, or do you need some time?

10 MR. WIECZOREK: No. Just a couple

11 of quick clarifying questions so I make sure it's

12 in the record.

13 MR. COIT: With respect to ITC

14 Exhibit 4B, I notice the shading is pretty hard to

15 read. Is the original colored?

16 MR. DEWITTE: Yeah. He's going to

17 mark his original colored.

18 MR. WIECZOREK: Actually I would

19 make a request -- these were handed out in

20 black-and-white this morning. I would make a

21 request that counsel for parties provide -- I mean,

22 they can just e-mail us a copy of the spreadsheet

23 so we can all have colored copies if we wanted to.

24 MR. DICKENS: We would be happy to

25 do that.

1 (Discussion off the record)
 2 MR. SMITH: Ben, I don't know if
 3 maybe your time is too crunched. I don't know if
 4 you have your file here but you could probably run
 5 it downstairs and they could spit out some colored
 6 copies for you.
 7 MR. DICKENS: Okay. I'd have to
 8 borrow John's because he's got the only colored
 9 copy.
 10 MR. SMITH: Okay. Do we have a
 11 color copier down there? We have a color printer.
 12 CHAIRMAN SAHR: We can take it
 13 downstairs and they can make colored copies in a
 14 matter of minutes. Maybe we want to do that.
 15 MR. SMITH: I just thought if you
 16 had a disk we could run it into our color printer.
 17 THE WITNESS: Do we want to do that
 18 now?
 19 MR. SMITH: I don't care. If you
 20 want to take 5 we could do that. We could have
 21 colored documents to look at.
 22 CHAIRMAN SAHR: Off the record.
 23 (Discussion off the record)
 24 MR. SMITH: We're back on the
 25 record. And, Mr. Wieczorek -- Mr. De Witte, you're

1 still under oath and please proceed, Mr. Wieczorek,
 2 cross-examination.
 3 MR. WIECZOREK: Thank you,
 4 Mr. Smith.
 5 CROSS-EXAMINATION
 6 BY MR. WIECZOREK:
 7 Q Mr. De Witte, I'm going to refer to your summary
 8 rebuttal testimony, all right?
 9 A Okay.
 10 Q And just a couple of initial questions. Although
 11 you've changed some of your transport-related cost
 12 numbers within what's been currently marked as ITC 4B,
 13 and that's the spreadsheet, you have used the same
 14 analysis and procedure that we discussed last week;
 15 correct?
 16 A Yeah. I used my initial direct trunking analysis for
 17 that. Because all I was doing was correcting the
 18 numbers that pertain to that.
 19 Q Right. So that analysis was the DS-1 to every exchange
 20 where there wasn't already an existing exchange for
 21 every wireless carrier that had a license in that area;
 22 correct?
 23 A No, not every carrier that had a license. The ones
 24 that would likely be offering service there. There's
 25 11 licensees for each area, and I only used four or

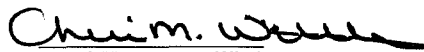
1 five.
 2 Q Okay. And we had the discussion on Interstate. If you
 3 go to page 3 of your testimony you revised the
 4 Interstate -- you revised the Interstate numbers down,
 5 but there was a lengthy discussion on the fact that RCC
 6 was one of the listed companies for -- excuse me. I
 7 think that's -- sorry. I believe I misspoke. You
 8 might want to go to -- let's go to Venture is what I
 9 meant to do. Trying to keep your companies straight,
 10 page 5 of 6.
 11 You used five CMRS carriers for Venture, and
 12 that's the same numbers you used last week; correct?
 13 A Correct.
 14 Q And there was a lengthy discussion with Mr. Houdek that
 15 one of the CMRS carriers you were using was RCC. Do
 16 you recall that?
 17 A Yes.
 18 Q And it was clear last week during the testimony that
 19 RCC does not have a license in the majority of the
 20 exchanges of Venture's. Do you recall that?
 21 A I recall that, but I left it at five CMRS carriers
 22 strictly because, you know, there's a likelihood that
 23 there could be five CMRS carriers that cover all of
 24 their exchanges. And so the, you know, assumption that
 25 we were trying to bring across is that, you know, we

1 weren't going to try to take a direct connection for
 2 every possible carrier that could likely be there,
 3 meaning all 11 licensees. We were trying to use a
 4 reasonable number of carriers that may appear in that
 5 area, and five appeared to be the reasonable number for
 6 that number.
 7 Q All right. But we had this very long discussion that a
 8 number of these carriers are not providing services
 9 today; correct?
 10 A Correct.
 11 Q And you have not adjusted your transport by eliminating
 12 any possible carriers; correct?
 13 A No, I did not eliminate any possible carriers.
 14 Q And what I want to get clear for the record is any
 15 reduction in transport was simply -- if I recall
 16 correctly was because of mathematical errors or you did
 17 not know of a preexisting DS-1 line to an exchange?
 18 A Correct. After our discussion there were some errors
 19 in the formulas and so those have been corrected. And
 20 then we reduced the appropriate transport costs for
 21 existing connections that were already there.
 22 Q Okay. And then on page 4 of 6 you talk about your
 23 reduction -- also your reduction on Venture because
 24 there is a switch that already has the LNP software
 25 installed.

1 A Yes. Venture has an exchange, Sisseton, South Dakota,
 2 which already has the LNP feature bit activated. And
 3 so in order to make sure that, you know, we weren't
 4 overstating the costs on that particular piece, we did
 5 reduce the LNP software cost estimate by Nortel's
 6 formula or pricing, which is \$4 equipped line.
 7 Q And as I understand it, this LNP feature was purchased
 8 as part of a standard upgrade for that switch, and
 9 that's why it's there -- or a regular upgrade probably.
 10 I don't want to use the word standard.
 11 A Yeah. They have already purchased the RTU fee for that
 12 as part of -- you know, part of what they purchased. I
 13 don't recall the specifics on exactly when it went in.
 14 Q Okay. Well, and I'm not trying to be confusing. I
 15 won't use the word standard. I'll just use the word
 16 they were doing an upgrade of that switch and that was
 17 part of the features they purchased when they upgraded
 18 that switch?
 19 A I believe that's the case, but I don't recall whether
 20 it went in initially or whether it went in as an
 21 upgrade.
 22 MR. WIECZOREK: That's all I have,
 23 unless, like I said, the color spreadsheet prompts
 24 me to ask something else.
 25 MR. SMITH: Okay. Well, we'll await

1 with, we may recall you in these Dockets later.
 2 Thank you.
 3 THE WITNESS: Thank you, Mr. Smith,
 4 Commissioners, staff. Thank you.
 5 MR. SMITH: With respect to the
 6 other -- with the case that we've been discussing
 7 this morning, which is the LNP Dockets other than
 8 Santel and 192, the hearings are in recess, I
 9 guess, pending receipt of the colored copies, and
 10 192 the hearing is concluded.
 11 At this time then are you ready to go,
 12 Mr. Larson, or should we take a short break or how
 13 do you want to go?
 14 MR. LARSON: I'm ready to go.
 15 MR. SMITH: Are your exhibits
 16 marked?
 17 MR. LARSON: Yes, they are. I think
 18 I'll be pretty short.
 19 MR. SMITH: Let's take a short break
 20 and see if Commissioner Burg will come back.
 21 (The proceedings are concluded)
 22
 23
 24
 25

1 that. For now then, Mr. Dickens, did you have any
 2 redirect of the witness?
 3 MR. DICKENS: No.
 4 MR. SMITH: Do any of the other
 5 parties have questions for Mr. DeWitte relative --
 6 MR. COIT: I just have one.
 7 CROSS-EXAMINATION
 8 BY MR. COIT:
 9 Q Mr. De Witte, do you know, did Venture -- they
 10 purchased the Sisseton exchange not all that long ago.
 11 Do you know, did Venture actually replace the switch
 12 that Qwest had in there?
 13 A I don't recall that off the top of my head. I don't
 14 know if they purchased that as part of the exchange or
 15 not.
 16 MR. COIT: Thank you.
 17 MR. SMITH: Ms. Wiest, any
 18 questions?
 19 MS. AILTS WIEST: No questions.
 20 MR. SMITH: Well, for now I guess --
 21 well, I don't know if you can step down or not.
 22 Yeah. I guess you can in the LNP Dockets that you
 23 testified to, other than Santel for now, with the
 24 proviso that if the colored exhibit additional
 25 changes that Mr. Wieczorek wants to question you

1 STATE OF SOUTH DAKOTA)
 2 :SS CERTIFICATE
 3 COUNTY OF HUGHES)
 4
 5 I, CHERI MCCOMSEY WITTLER, a Registered
 6 Professional Reporter and Notary Public in and for the
 7 State of South Dakota:
 8 DO HEREBY CERTIFY that as the duly-appointed
 9 shorthand reporter, I took in shorthand the proceedings
 10 had in the above-entitled matter on the 21st day of
 11 June 2004, and that the attached is a true and
 12 correct transcription of the proceedings so taken.
 13 Dated at Pierre, South Dakota this 5th day
 14 of July 2004.
 15
 16
 17 
 18 Cheri McComsey Wittler,
 19 Notary Public and
 20 Registered Professional Reporter
 21
 22
 23
 24
 25

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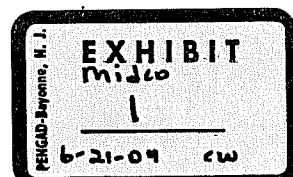
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DIRECT TESTIMONY
OF
W. TOM SIMMONS
ON BEHALF OF
MIDCONTINENT COMMUNICATIONS
MOTION TO COMPEL LOCAL NUMBER PORTING
OR GOOD FAITH NEGOTIATION

Docket TC03-192

May 13, 2004



1 INTRODUCTION

2

3 **Q. PLEASE STATE YOUR NAME FOR THE RECORD:**

4 A. W. Thomas Simmons

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Midcontinent Communications as the Vice President of Public
7 Policy.

8 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

9 A. I am the corporate officer responsible for regulatory, government and community
10 affairs, public and media relations, and represent our telephone, cable and Internet
11 product teams on policy issues.

12 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?**

13 A. I hold a Bachelor and Masters degrees in Psychology and have been a Midcontinent
14 Vice President since 1989. My first Midcontinent assignment was with the broadcast
15 division as a general manager of four South Dakota radio stations. In 1995, I joined
16 the telecommunications division, Midco Communications, as their general manager.
17 From 1995 to 2001, I led the team that developed our local exchange operation and
18 developed the commercial and network services group.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

20 A. Yes. I have participated in numerous issues and meetings, formally filing testimony
21 "In the Matter of the Establishment of Switched Access rates for US West
22 Communications, Inc", Docket TC 96-107, "In the Matter of the Analysis of Qwest
23 Corporation's Compliance With Section 271c of the Telecommunications Act of 1996",

1 Docket TC 01-165, and “In the Matter of the Application of Qwest Corporation to
2 Reclassify Local Exchange Services as Fully Competitive”, Docket TC 03-057.

3 **WHAT ISSUES DOES THIS TESTIMONY ADDRESS?**

4 A. The importance of Local Number Portability and provision alternatives.

5 **WHAT IS THE IMPORTANCE OF LOCAL NUMBER PORTABILITY?**

6 Q. One of the most significant barriers to competition is the inability of customers to
7 switch from one telephone provider to another and retain the same number, which is
8 why Congress directed telephone providers in the Telecommunications Act of 1996
9 to provide Local Number Portability. Recognizing that there would be initial
10 complications in developing number portability, the “96 Act” addressed specific
11 options.

12 **ARE THERE OPTIONS AVAILABLE FOR DELIVERING FOR PORTING
13 LOCAL NUMBERS?**

14 Q. The options are Long Term or Permanent Number Portability and Interim Number
15 Portability.

16 **WHAT ARE THE DIFFERENCES BETWEEN THESE METHODS?**

17 Q. Long term Number portability is generally defined as the ability of the end user to
18 permanently retain, at the same location, existing telephone numbers without
19 impairment of quality reliability or convenience when changing from one service
20 provider to another. End users can easily choose providers within a rate center and
21 keep their number. Under long term number portability, proper call routing is
22 accomplished by “dipping” into the LNP database to obtain the local routing number
23 (LRN), and the call is routed directly to the switch of the customers chosen provider.

1 Interim Number Portability is most commonly provisioned using the remote call
2 forwarding method (RCF) which requires the customer's directory number to be
3 retained in the original providers switch and a second "shadow" number to be
4 assigned in the requestor's switch.

5 **Q. WHAT ARE THE SIGNIFICANT CHARACTERISTICS OF THESE**
6 **DIFFERING METHODS?**

7 A. Long Term or Permanent Number Portability is the best solution. After a customer
8 has made the choice to change service providers, calls are routed is as directly as
9 they were with the previous provider. It's as if the customer had been initially set
10 up with the provider of choice. There are, however, significant costs in initially
11 setting up permanent portability. Interim Number Portability is relatively
12 inexpensive to establish. The major drawbacks may include feature limitations
13 which may impact proper caller ID transmission for a call originating from a
14 shadow number. An RCF call requires a line from the original provider and a line
15 from the new provider to remain seized for the duration of a call.

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

17 A. The Telecommunications Act of 1996 was enacted to establish a national
18 framework to promote competition and reduce unnecessary regulation. Congress
19 recognized that bringing competition to local phone markets would speed high
20 quality services, advanced services, and competitive prices to customers by
21 offering them choices. Competition is all about choice. In reality, what choice do
22 customers have if they are held captive to a company that "owns" their telephone
23 number. I offer the information on Interim Number Portability as a cost effective,

1 albeit temporary option until real impact can be measured and properly sized.
2 While I can't counter with specific details, the cost estimates of permanent number
3 portability offered by the petitioner strike me as extraordinarily high. Perhaps
4 after a reasonable period of time and experience in offering local number
5 portability the cost of equipment and back office work flow can be more accurately
6 predicted.

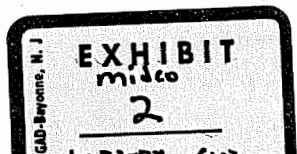
7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. It does.

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DIRECT TESTIMONY
OF
MARY LOHNES
ON BEHALF OF
MIDCONTINENT COMMUNICATIONS
MOTION TO COMPEL LOCAL NUMBER PORTING
OR GOOD FAITH NEGOTIATION
Docket TC03-192

May 7, 2004



1 INTRODUCTION

2
3 **Q. PLEASE STATE YOUR NAME FOR THE RECORD:**

4 A. Mary Lohnes

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Midcontinent Communications as Regulatory Affairs Manager.

7 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EMPLOYEMENT EXPERIENCE.**

9 A. I hold a B.S. in Organizational Behavior and Management from Sioux Falls College, Sioux
10 Falls, SD. My employment with Midcontinent began in June of 1991 in sales support and in
11 1993 was promoted to Product Manager of Long Distance. With the passage of the 1996
12 Telecommunications Act, I was part of the team that negotiated an agreement with Qwest
13 (then USWest) to provide local exchange services in South Dakota. I managed the team that
14 submitted orders and worked trouble calls. The fall of 1999 I managed the telephone
15 customer service department and handled regulatory affairs responsibilities. In 2000 I
16 became the Regulatory Affairs Manager.

17 II. TESTIMONY

18 **Q. WHAT ISSUES DOES THIS TESTIMONY ADDRESS?**

19 A. I will show that, as part of the Interconnection Agreement signed by Interstate
20 Telecommunications Cooperative and Midcontinent Communications, Local Number
21 Portability was negotiated and that the agreed upon negotiation never took place.

22 **Q. DESCRIBE WHAT TOOK PLACE.**

23 A. Midcontinent Communications made a financial decision and commitment to bring
24 competitive local exchange service to the community of Webster. On April 17, 2003,
25 Midcontinent made application with the SD PUC to expand its Certificate of Authority to
26 include the service territory of Webster, serviced by Interstate Telecommunications

1 Cooperative. At that same time, Midcontinent sent notice to ITC of the application to the
2 PUC and a request for interconnection in the Webster exchange and to have a meeting within
3 two weeks of the notice. That meeting took place on May 1, 2003 where a broad discussion
4 was held on what services Midcontinent planned to provide, which included LNP.

5 The companies entered into negotiation on the interconnection agreement and after much
6 discussion, the companies agreed that "The parties will negotiate in good faith the provision
7 of number portability on a reciprocal basis under terms and conditions to be negotiated and
8 added to this agreement by amendment, within six months from the date of this agreement."

9 The agreement was signed by ITC on November 3, 2003, and by Midcontinent on November
10 6, 2003. The SD PUC Commission approved the agreement on December 17, 2003.

11 On December 29, 2003, I sent an email message to Mr. Jerry Heiberger, general manager of
12 ITC, requesting a date for the following week to discuss number porting. **Exhibit 1.**

13 Mr. Heiberger responded on January 8, 2004 stating that he had been busy with meetings and
14 requested a meeting on Monday January 4th. I responded back that I assumed he meant
15 January 12th and that Midcontinent would be available the morning of the 12th. **Exhibit 2.**

16 On January 12th, Mr. Heiberger called me stating that he still needed more time for research
17 with his team to look into number portability. They needed to know specific details relating
18 to details of execution and costs. He further stated that he would make it a higher priority
19 with this people and get back in a week or so. I agreed to another short delay. **Exhibit 3.**

20 On January 28, 2004, Mr. Heiberger left me a voice mail message that he wanted to give me
21 an update on the LNP issue. **Exhibit 4.**

22 On January 29, 2004, I returned Mr. Heiberger's call. We discussed a switch issue and he
23 informed me of a board meeting coming up where LNP issues would be discussed. **Exhibit 5.**

24 On February 24, 2004, I sent an email to Mr. Heiberger asking for an update on his research
25 progress, and requested a meeting. **Exhibit 6.**

1 On February 25, 2004, Mr. Heiberger responded that he was trying to establish another call
2 with the appropriate personnel for that afternoon and would call once they have the issues
3 finalized. **Exhibit 7.**

4 On March 3, 2004, I sent Mr. Heiberger another email requesting a meeting. **Exhibit 8.**

5 On March 4, 2004, Mr. Heiberger responded that ITC has determined to file a petition for
6 suspension or modification of the LNP rules and requirements with the SD PUC. **Exhibit 9.**

7 **Q. ITC HAS CONTENDED THAT IT WAS NOT CLEAR THAT MIDCONTINENT**
8 **WAS INTENT ON SCHEDULING A MEETING. WHAT IS YOUR RESPONSE?**

9 A. I had to initiate virtually all contacts in an effort to get the matter moving. I was under the
10 distinct impression that Mr. Heiberger simply was delaying the process, and the context of his
11 responses corroborates that conclusion. For example, the January 29th conversation
12 referenced a board meeting at which LNP would be discussed, yet by February 24th Mr.
13 Heiberger still had not contacted me, nor did he ever mention what happened at the board
14 meeting.

15 **Q. WHY IS LNP IMPORTANT TO MIDCONTINENT IN THE WEBSTER**
16 **EXCHANGE?**

17 A. Midcontinent cannot effectively compete against ITC without LNP. Customers tend to want
18 to keep their telephone numbers. Remember, Midcontinent's entry into the Webster
19 exchange is a competitive entry. ITC is offering cable service in competition to
20 Midcontinent's long standing presence in the market, since 1974. Midcontinent believes ITC,
21 as the incumbent carrier, is clearly violating both the spirit and the letter of the 1996 Act in
22 impeding competition in this manner.

23

1 III. SUMMARY

2 **PLEASE SUMMARIZE YOUR TESTIMONY.**

3 The time line of attempted negotiations on the part of Midcontinent clearly demonstrates the
4 ample amount of notice and time for ITC to determine the method to provide LNP. The messages
5 clearly demonstrate Midcontinent's desire and patience to negotiate terms discussed in the PUC
6 approved Interconnection Agreement. The messages also clearly demonstrate a lack of interest
7 on the part of ITC to negotiate in good faith the provision of number portability as agreed to in
8 our Interconnection Agreement. Their decision to file a petition with the Commission for
9 suspension under the Wireless Porting Order leads us to question whether they ever intended to
10 negotiate in good faith, or simply view their petition for suspension as a way of relief from their
11 previous commitment. In either case, ITC's agreement to negotiate in good faith for Wireline
12 LNP should be upheld.

13 **DOES THIS CONCLUDE YOUR TESTIMONY?**

14 Yes, it does.

1 **Exhibit 1**

2
3 **From:** Mary Lohnes
4 **Sent:** Monday, December 29, 2003 3:16 PM
5 **To:** Jerry Heiberger (E-mail)
6 **Subject:** LNP

7 Good Afternoon Jerry,
8

9 We need to keep the discussion on number porting going, is there a day and time
10 next week that would work for you?
11

12 Happy New Year!

13 Mary
14
15
16

17 **Exhibit 2**

18 **From:** Jerry Heiberger [jerryhei@itctel.com]
19 **Sent:** Thursday, January 08, 2004 4:26 PM
20 **To:** 'Mary Lohnes'
21 **Subject:** RE: LNP
22

23 Mary,
24

25 I have been gone for the holidays and am trying to get caught up with
26 board
27 of director issues the past few days. Will you be available on Monday,
28 January 4th. I will plan to call you sometime mid morning if this works
29 for
30 your schedule.
31

32 Thanks,
33

34 Jerry
35

36 **Exhibit 3**

37 ITC - LNP

38 Below are phone calls and/or voice mail message notes which are in addition to email messages:
39

40 Jerry had sent an email on January 8, 2004, in response to my email request for a
41 meeting. Jerry suggested a meeting on Monday, January 4th. I replied on January 9th that
42 I assumed he meant Monday, January 12th.

43 I received a phone call from Jerry on January 12th. Jerry said that he still needed to do
44 some research with his team to look into it. They needed to know what it all will take to
45 get it done and the costs. Jerry said he would make it a higher priority with this people
46 and get back in a week or so
47

1 **Exhibit 4**

2
3 ITC - LNP

4 Below are phone calls and/or voice mail message notes which are in addition to email messages:
5 On January 28, 2004, Jerry Heiberger left me a voice mail message that he had an update on the
6 LNP issue to give me.

7
8 **Exhibit 5**

9
10 ITC - LNP

11 Below are phone calls and/or voice mail message notes which are in addition to email messages:
12 January 29, 2004, I returned Jerry's call. I advised Jerry that our technical team had been
13 trying to test the connectivity but had been running into some problems. We are being
14 asked to turn up "00" for continuity test. We would like ITC to leave the circuits up so
15 we can test on our own schedule and will then advise them of test completion. Jerry was
16 unaware of any problems and did not know what "00" meant. Jerry would have their
17 technical manager call Midcontinent's technical manager.

18
19 Still working on LNP.

20
21 **Exhibit 6**

22
23 **From:** Mary Lohnes
24 **Sent:** Tuesday, February 24, 2004 2:23 PM
25 **To:** Jerry Heiberger (E-mail)
26 **Subject:** LNP

27 Good Afternoon Jerry,

28
29 Where are you at with your research on LNP? Are you soon at a point where we
30 should have a meeting to discuss the process?

31
32 Thanks!

33 Mary

34
35
36 **Exhibit 7**

37
38 From: Jerry Heiberger [jerryhei@itctel.com]
39 Sent: Wednesday, February 25, 2004 8:35 AM
40 To: 'Mary Lohnes'
41 Subject: RE: LNP

42
43 Good Morning Mary,

44
45
46 I am trying to establish another call with appropriate personnel for
47 this
48 afternoon. I will call once we have the issues finalized.

49
50 Jerry

1
2 **Exhibit 8**

3
4 From: Mary Lohnes
5 Sent: Wednesday, March 03, 2004 3:40 PM
6 To: 'Jerry Heiberger'
7 Cc: Nancy Vogel
8 Subject: RE: LNP
9

10 Good Afternoon Jerry,

11
12 Are you ready for a meeting to discuss LNP? We will need to discuss
13 how we will exchange information between our companies, paper or
14 electronic. We will also want to discuss the exchange of other
15 customer related information such as directory listing, phone book
16 listings, and intercept messages.

17
18 Thanks!
19 Mary
20
21
22
23

24 **Exhibit 9**

25
26 From: Jerry Heiberger [jerryhei@itctel.com]
27 Sent: Thursday, March 04, 2004 12:44 PM
28 To: mary_lohnes@mimi.net
29 Subject: LNP
30
31

32 Our e-mail server is back up so I thought I would try to send you this
33 message again via e-mail.

34
35 Jerry

36
37 Good Morning Mary,

38
39 After two days of board meetings, I have finally returned to my office
40 to
41 update you on the status of the LNP issue. After analyzing the current
42 rules, and both nonrecurring and recurring cost of deploying LNP, ITC
43 has
44 determined it is in its best interest to file a petition for suspension
45 or
46 modification of the LNP rules and requirements before the SD PUC next
47 week.

48 Because I will be out of the office until mid-week, I anticipate the
49 petition will be available late next week at the commission.
50

51 Jerry
52
53

4056

INTERCONNECTION AGREEMENT

between

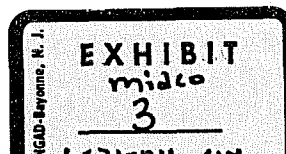
MIDCONTINENT COMMUNICATIONS

and

INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.

for

SOUTH DAKOTA



INTERCONNECTION AGREEMENT

This Interconnection Agreement, made as of the ____ day of October, 2003, is between Midcontinent Communications (“Midcontinent”) and Interstate Telecommunications Cooperative, Inc. (“ITC”).

I. RECITALS

Pursuant to this Interconnection Agreement (“Agreement”), Midcontinent and ITC (collectively, “the Parties”) will interconnect their networks to one another within the Webster, South Dakota exchange which is defined by the NXX code “345” – XXXX. This Agreement includes terms and conditions for such network interconnection.

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which the parties agree to provide interconnection and the exchange of local traffic within the “345” Webster, South Dakota exchange. The Agreement includes all accompanying appendices.
- B. In the performance of their obligations under this Agreement, the Parties shall act consistent with their lawful obligations. Where notice, approval or similar action by a Party is permitted or required in writing by any provision of this Agreement, such action shall not be unreasonably delayed, withheld or conditioned.
- C. The Parties agree and understand that the per minute reciprocal transport and termination rates set forth in Appendix A to this Agreement are not based on a specific costing methodology or company specific cost study.

- D. The Parties agree and understand that this Agreement does not affect ITC's status as a "rural telephone company" for purposes of Section 251(f)(1) of the Communications Act of 1934, as amended.
- E. The Parties agree that their entry into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements and/or matters related to cost recovery covered in this Agreement. The execution of this Agreement by the Parties is not a concession or waiver in any manner concerning their position that certain rates, terms, and conditions contained herein may or may not be required by law.

III. DEFINITIONS

- A. "Act" means the Communications Act of 1934 (47 U.S.C. § 151, et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted judicially and in the duly authorized rules and regulations of the FCC or the South Dakota Public Utilities Commission (SD PUC)
- B. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter that refers to the number transmitted through a network identifying the calling party.
- C. "Commission" means the South Dakota Public Utilities Commission.
- D. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. The CCS used by the Parties shall be Signaling System 7.

- E. “Interconnection” is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of telecommunications traffic.
- F. “ISP-bound Traffic” has the same meaning as in the FCC’s Order on Remand and Report and Order in the matter of Intercarrier Compensation for ISP-bound Traffic. 16 F.C.C.R.9151 (2201) (“FCC ISP Order”).
- G. “LIS” is defined as local interconnection services. Only LIS circuits may be used to route Local Traffic between the Parties. No long distance toll traffic may be routed over LIS circuits.
- H. “Local Traffic” means traffic, other than ISP-bound Traffic, that is originated by an end user of one Party in the “345” exchange and terminates to an end user of the other Party in the same exchange.
- I. “North American Numbering Plan” or “NANP” means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- J. “NXX” means the fourth, fifth and sixth digits of a ten-digit telephone number.
- K. “Party” means either Midcontinent or ITC and “Parties” means Midcontinent and ITC.
- L. “Point of Interface” or “POI” is a mutually agreed upon point of demarcation where the exchange of traffic between Midcontinent and ITC takes place, as set forth in Appendix B, which may be changed from time to time upon mutual agreement in writing between the parties.

- M. "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226 of the Act).
- N. "Transit Traffic" is traffic that, for purposes of this Agreement only, neither originates nor terminates with the party providing the transit service. Transit services and related rates are not covered by this Agreement.
- O. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined therein.

IV. RECIPROCAL TRAFFIC EXCHANGE

A. Scope

Reciprocal traffic exchange addresses the exchange of local traffic between the Parties.

B. Types of Traffic

1. The types of traffic to be exchanged under this Agreement are limited to Local Traffic and ISP-bound Traffic as described above.
2. The traffic not covered by this Agreement includes all other traffic, and certain ancillary traffic such as:
 - a. Directory Assistance
 - b. Operator call termination
 - c. 800/888 database dip
 - d. LIDB
 - e. Information services requiring special billing

- f. Wireless traffic terminating on either Party's network from a Commercial Mobile Radio Service provider
- g. 911
- h. Transit traffic

V. INTERCONNECTION

A. Definition

"Interconnection" is the linking of the Midcontinent and ITC networks for the mutual exchange of local and/or ISP-bound traffic, and the completion of calls to the called customer, by the party terminating the call on its side of the POI.

B. Physical POI

Each Party is responsible for providing its own facilities, including the cost of those facilities, up to the actual physical POI. The Parties will negotiate the facilities arrangement for the interconnection of their respective networks at the physical POI. Refer to Appendix B.

C. Service Interruptions

1. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the other Party's plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either

Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service."

2. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) for such service. Each Party shall provide a method for receiving trouble reports on a 24-hour basis. A mechanized recording process that is reviewed during normal business hours shall satisfy this requirement.
3. Each Party shall furnish a trouble reporting telephone number.
4. Before either Party reports a trouble condition, it shall use its best efforts to be sure that the trouble is not caused by its own facilities.
 - a. In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority assigned to their own services.
 - b. The Parties shall promptly cooperate in isolating trouble conditions.

D. NUMBER PORTABILITY

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to

provided by the other Party. Each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party with notice of such violation at the earliest practicable time.

4. Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.
5. The Parties shall cooperate in minimizing fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

B. Term of Agreement

This Agreement shall become effective upon Commission approval pursuant to Sections 251 and 252 of the Act. The end of the initial term of this Agreement shall be December 31, 2005. The Agreement shall automatically renew for one-year terms unless written notice terminating the Agreement is provided by either Party no later than six months before the end of the then-current term.

C. Compensation

1. Local Traffic

The Parties agree that compensation for call termination for Local Traffic (i.e., the completion of a local call by a Party to the called customer on the side of the POI of the Party completing the call) shall be based upon rates set forth in Appendix A, and upon the reciprocal compensation methodology set forth therein.

2. ISP Bound Traffic

The Parties agree that ISP-bound Traffic is governed by the FCC ISP Order. The Parties agree to exchange ISP-

bound traffic utilizing the bill and keep compensation mechanism.

D. Billing and Payment

1. Each Party shall bill on a monthly basis for services provided pursuant to this Agreement.
2. The Parties shall pay invoices within forty-five (45) days receipt of the invoice.
3. A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
4. A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
5. If the dispute is resolved in favor of the invoicing Party, then the disputed amount plus the late payment charge shall be paid to the invoicing Party within twenty (20) days of the resolution of the dispute.
6. Any amounts owed under the terms of this Agreement if not paid when due, shall be subject to a late payment fee equal to the greater of (a) one and one-half percent per month or (b) the highest rate of interest that may be charged under applicable law, compounded daily from the date on which payment was due until the date on which payment is made.

E. Confidential/Proprietary Information

1. The Parties agree that it may be necessary to exchange certain information during the term of this Agreement, including, without limitation, technical and business plans, information, proposals, specifications, and procedures, orders for service, usage information, customer account data and Customer Proprietary Network Information, and that such information shall be deemed Confidential Information. The Confidential Information is deemed Proprietary to the Disclosing Party and it shall not be disclosed or used by the Recipient for any purpose other than to provide service as specified in this Agreement. Recipient may disclose Confidential Information as required by law, provided that the Disclosing Party has been notified of the requirement promptly.
2. Information shall not be considered Confidential Information if it was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party; or after it becomes publicly known or available through no breach of this Agreement.
3. Each Party agrees that the Disclosing Party would be irreparably injured by breach of this Agreement by Recipient and that the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of this section. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

F. Taxes

Each Party securing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such securing Party (or the providing Party when such providing Party is permitted to pass along to the securing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.

G. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). In the event of a labor dispute or strike, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

H. Limitation of Liability

1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agents or contractors in performing the obligations contained in this Agreement.

2. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.
3. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.
4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

I. Warranties

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

J. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other

Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

K. Severability

In the event that any one or more of the provisions contained herein shall for any reason be determined to be unenforceable or in conflict with state or federal law in any respect, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may pursue its lawful remedies.

L. Nondisclosure

All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data furnished by one Party to the other Party shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information.

M. Survival

The Parties' obligations under this Agreement that by their nature are intended to continue beyond the termination or expiration of this Agreement, including the provisions of Section VIII (L), shall survive the termination or expiration of this Agreement.

N. Dispute Resolution

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents (“Dispute”) cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association (“AAA”), or in the alternative pursuant to the jurisdiction of the appropriate regulatory agency. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator’s award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys’ fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration shall occur in Sioux Falls, SD. Nothing in this Section shall be construed to waive or limit either Party’s right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

O. Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of South Dakota. It shall be interpreted solely in accordance with the terms of the Act and the applicable South Dakota law.

P. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Q. Notices

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Midcontinent Communications
Regulatory Affairs Manager
5001 West 41st Street
Sioux Falls, SD 57106

and

Interstate Telecommunications Cooperative, Inc.
Jerry Heiberger, General Manager
312 Fourth Street West
P.O. Box 920
Clear Lake, SD 57226

Each Party shall inform the other of any changes in the above addresses.

R. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such

employees, including compliance with social security taxes, withholding taxes and all other regulations governing matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

s. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

t. Referenced Documents

All references to Sections and Appendixes shall be deemed to be references to Sections of, and Appendixes to this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Midcontinent practice, ITC practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements,

addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Midcontinent practice, ITC practice, or publication of industry standards (unless Midcontinent elects otherwise). Should there be any inconsistency between or among publications or standards, the Parties will discuss any inconsistencies and reach agreement.

U. Publicity and Advertising

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or Marks without the prior written approval of the other Party.

V. Amendment

Midcontinent and ITC may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, and the Act, the Parties agree to cooperate promptly, and in good faith, to negotiate and implement any such additions, changes and corrections to this Agreement .

W. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

X. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

Y. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and shall, at all times, be subject to review by the Commission. In the event any such review rejects any portion of this Agreement, renders it inoperable or creates any ambiguity or requirement for further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

Z. Change of Law

The Parties acknowledge that their relationship is subject to the Act, South Dakota Law, the FCC's regulations implementing the Act and the decisions of the FCC, the Commission and the courts interpreting the Act, South Dakota Law and the FCC's regulations. If, subsequent to the effective date of this Agreement, there is any decision, or change in the Act, South Dakota Law or the FCC's rules that renders any provision of this Agreement unlawful (a "Change of Law"), the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification to the Agreement that is consistent with the law then in effect and, to the extent possible, with the intent of this Agreement. The Parties agree that this provision shall be construed narrowly and that no provision of this Agreement shall be deemed unlawful under this section unless such a result is required by a Change of Law.

AA. Compliance

Each party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

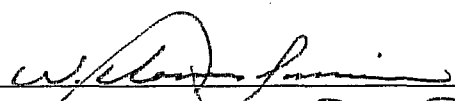
BB. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings,

proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Midcontinent Communications

By 
Its VICE PRESIDENT - PUBLIC POLICY

NOVEMBER 6, 2003
Date

**Interstate
Telecommunications
Cooperative, Inc.**

By 
Its General Manager

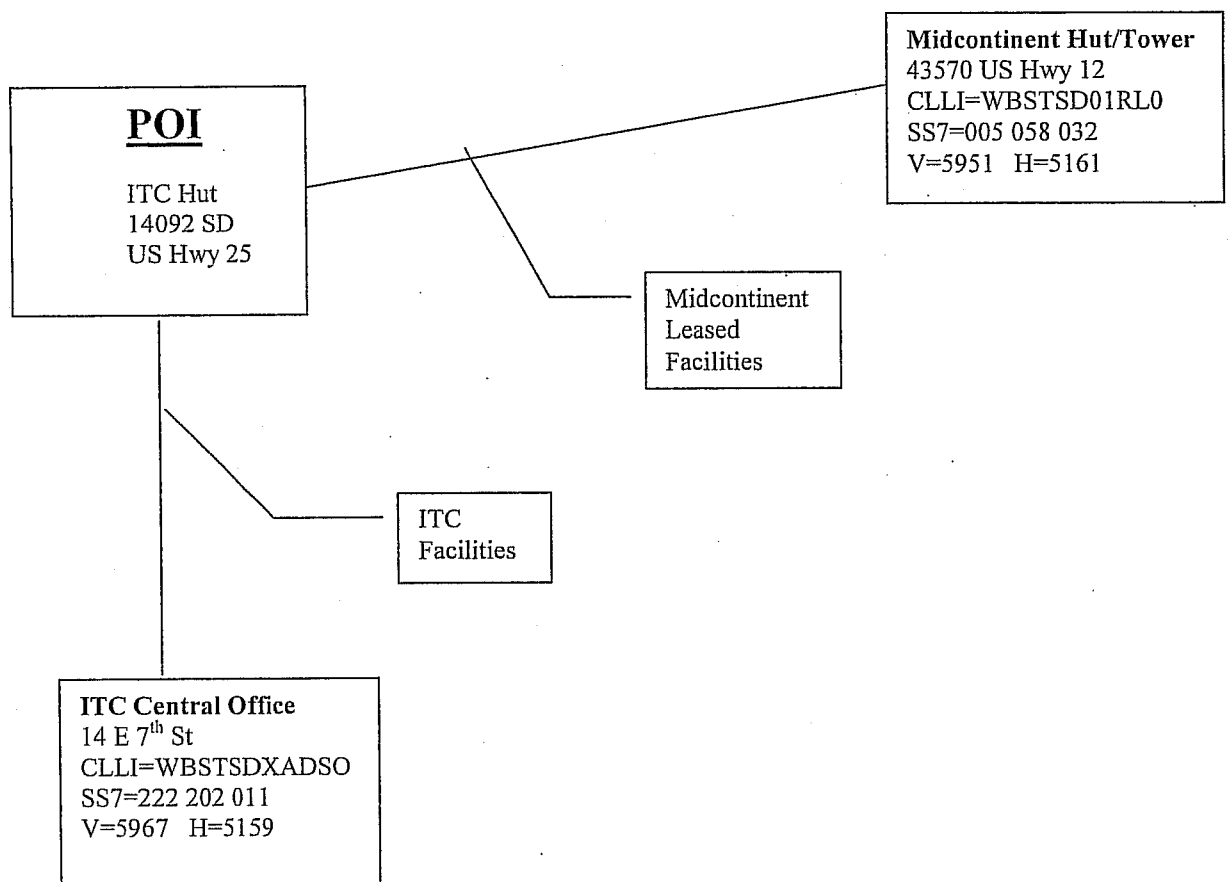
November 3, 2003
Date

Appendix A
Rates and Charges

Reciprocal Transport and Termination Rate for Local Traffic- \$0.03 per
minute

Appendix B

Physical Point Of Interface (POI)



*Separate Trunk Groups for Local Traffic and ISP-bound Traffic will be facilitated.

**Refer to the current August, 2001 agreement for the provision of Floor, Space and Power.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNEC-
TION AGREEMENT BETWEEN MID-
CONTINENT COMMUNICATIONS
AND INTERSTATE TELECOMMUNI-
CATIONS COOPERATIVE, INC.

Docket No. TC03-192

DIRECT PRE-FILED TESTIMONY OF
JERRY HEIBERGER

5/28/2004



1 **Q. Please state your name, title, business address, and telephone number for the**
2 **record.**

3 A. My name is Jerald (Jerry) J. Heiberger. I am the General Manager for Interstate
4 Telecommunications Cooperative, Inc., located at 312 4th St. West, Clear Lake, South
5 Dakota, 57226. My telephone number is (605) 874-2181.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Interstate Telecommunications Cooperative, Inc. (ITC)
8 headquartered in Clear Lake, SD.

9 **Q. Please briefly describe your employment duties.**

10 A. As the General Manager of ITC and its two wholly owned subsidiary companies,
11 Interstate Satellite Services, Inc. and ITC Rural Economic Development Inc., I am
12 responsible for managing all activities of the cooperative and its subsidiaries directly
13 or through subordinate managers. I report to an eleven person board of directors. I
14 interpret and implement board policies. I plan, direct, coordinate and control all lines
15 of the business with the assistance of my manager and supervisory personnel. I
16 determine the objectives, establish operating procedures and ensure the success of
17 companies within the guidelines and authority established by the board of directors. I
18 ensure that all operations comply with applicable federal, state and local regulations. I
19 am the primary representative of ITC before regulatory agencies, legislative bodies
20 and industry associations. I evaluate new business opportunities and prepare
21 recommendations to the board based on my analysis.

1 **Q. As part of your duties as General Manager, were you involved with negotiating**
2 **the Interconnections Agreement, including the issue of Local Number Portability**
3 **(LNP) with Midcontinent Communications (Midcontinent)?**

4 A. Yes. I directly negotiated with Midcontinent on these issues.

5 **Q. What issues does your testimony address?**

6 A. I will show that ITC never agreed to provide LNP to Midcontinent and that ITC
7 specifically reserved the right to pursue its legal options, including filing a petition for
8 suspension or modification pursuant to Section 251(f) (2). Further, I will show that
9 Midcontinent knew that ITC may not provide LNP and agreed to this in the
10 Interconnection Agreement. Finally, I will show that ITC proceeded in good faith to
11 examine the cost and other issues concerning LNP; kept Midcontinent informed of its
12 progress; and that Midcontinent never expressed any dissatisfaction with ITC's
13 efforts until ITC informed Midcontinent that it would file a petition for suspension or
14 modification of LNP before the South Dakota Public Utilities Commission.

15 **Q. When did Midcontinent request interconnection from ITC?**

16 A. Midcontinent served ITC with a copy of its request for interconnection in the Webster
17 exchange on April 18, 2003. The document included a request that ITC and
18 Midcontinent personnel meet within two weeks to establish a schedule and
19 framework for negotiations to develop an Interconnection Agreement. On May 1,
20 2003, two weeks after the application was filed with the South Dakota Public Utilities
21 Commission, Midcontinent and ITC met to discuss its request.

22

1 **Q. In her testimony, Ms. Lohnes states that during the May 1, 2003 meeting, “A**
2 **broad discussions was held on what services Midcontinent planned to provide,**
3 **which included LNP.” Is this your recollections of events?**

4 A. No. With respect to Ms. Lohnes’ statement concerning the discussion of LNP, my
5 recollection is that during this meeting, Midcontinent stated that they would be
6 applying for their own NXX and that they may request LNP from ITC.

7 **Q. When did Midcontinent raise the issue of LNP again?**

8 A. Midcontinent did not raise the issue of LNP again until early September 2003. By
9 this time, the parties had reached agreement on most provisions in the Interconnection
10 Agreement.

11 **Q. Describe what took place during the negotiation of the Interconnection**
12 **Agreement with respect to LNP.**

13 A. On September 15, 2003, Midcontinent proposed the addition of a provision to the
14 agreement to address LNP. The provision proposed by Midcontinent stated that the
15 “Parties shall provide Number Portability” and further stated that the “Parties will
16 follow the LNP (Long-term Number Portability) provisioning process recommended
17 by the North American Numbering Council (NANC) and adopted by the FCC.” A
18 copy of the full text of Midcontinent’s proposal is attached as Exhibit 1 to my
19 testimony. This language makes it clear that if ITC had accepted Midcontinent’s
20 proposal it would be agreeing to provide LNP. It further makes it clear that
21 Midcontinent was requesting long-term number portability and not interim number
22 portability.

1 **Q. Did ITC agree to this proposal?**

2 A. No. ITC did not accept this proposed language.

3 **Q. What happened next?**

4 A. Midcontinent proposed a revised provision, attached hereto as Exhibit 2. This
5 provision still stated that the parties “shall” provide number portability. It also
6 contained a reservation of rights for Midcontinent “should the parties be unable to
7 agree upon terms and conditions for number portability...”

8 **Q. Did ITC agree to this proposal?**

9 A. No.

10 **Q. Then what happened?**

11 A. ITC suggested a number of changes to Midcontinent’s language. ITC deleted the
12 language that stated ITC shall provide number portability and inserted language to
13 make it clear that ITC was not agreeing to provide number portability. Specifically,
14 ITC inserted language stating that “[t]o the extent that [number portability] is
15 provided” it would be provided in accordance with the rules and regulations
16 prescribed by the FCC and the South Dakota Public Utilities Commission. Further,
17 ITC reserved its rights under the Act and South Dakota law, which rights “may be
18 asserted *should the parties be unable to agree to provide number*
19 *portability...*”(emphasis added). The full text of this proposal is attached as Exhibit
20 3.

21 **Q. Did Midcontinent agree to this proposal?**

1 A. No. Midcontinent submitted an alternate first sentence to the proposed language
2 which stated that the parties would negotiate in good faith "to achieve" number
3 portability. A copy of the text of this proposal is attached as Exhibit 4.

4 **Q. Did ITC agree to this proposal?**

5 A. No. ITC struck the words "to achieve" from the first sentence to eliminate any
6 language that would indicate that ITC was agreeing to provide number portability. A
7 copy of the text of this proposal is attached as Exhibit 5.

8 **Q. Did Midcontinent agree to this change?**

9 A. Yes.

10 **Q. In her testimony, Ms. Lohnes states that the Interconnection Agreement was**
11 **signed by ITC on November 3, 2003; that it was signed by Midcontinent on**
12 **November 6, 2003; and that it was approved by the Commission on December**
13 **17, 2003. Do you agree with these dates?**

14 A. Yes.

15 **Q. After the parties agreed to this language, please describe what ITC did.**

16 A. ITC began investigating the cost and implementation of LNP. ITC's investigation
17 began in November 2003 and continued through February 2004. In March 2004, ITC
18 filed its petition, asking the South Dakota Public Utilities Commission to suspend or
19 modify the requirements of Section 251(b)(2) of the Act concerning the provision of
20 local number portability.

21 **Q. ITC's opposition to Midcontinent's Motion To Compel and Ms. Lohnes'**
22 **testimony contain e-mail messages between the parties and describe voice mail**
23 **messages and telephone communications between the parties concerning LNP.**

1 **Do you agree that these are the total communications between the parties**
2 **concerning LNP after the Commission approved the Interconnection**
3 **Agreement?**

4 A. To the best of my knowledge, these are the total communications between the parties
5 concerning LNP.

6 **Q. Prior to filing its Motion to Compel, did Ms. Lohnes or anyone else at**
7 **Midcontinent ever tell you that ITC's responses concerning LNP were**
8 **unsatisfactory or that Midcontinent believed ITC was not negotiating in good**
9 **faith?**

10 A. No. You can see from the e-mail messages that Ms. Lohnes never indicated that my
11 responses were unsatisfactory. The first time Midcontinent stated that it believed ITC
12 was not negotiating in good faith was in its Motion To Compel filed at the South
13 Dakota Public Utilities Commission.

14 **Q. In her testimony, Ms. Lohnes states that she was "under the impression that Mr.**
15 **Heiberger simply was delaying the process, and the context of his responses**
16 **corroborates that conclusion." As an example, Ms. Lohnes states that "the**
17 **January 29th conversation referenced a board meeting at which LNP would be**
18 **discussed, yet by February 24th Mr. Heiberger still had not contacted me, nor**
19 **did he ever mention what happened a (sic) the board meeting." Please explain**
20 **why you did not respond to Ms. Lohnes until February 24th.**

21 A. At the time of Midcontinent's request, ITC had not been required to implement LNP
22 and ITC had no experience with the estimated costs and implementation issues in
23 connection with LNP. Once the LNP provision was included in the Midcontinent

1 Interconnection Agreement, ITC personnel began researching the anticipated costs
2 and implementation issues which we would be faced with if we deployed LNP.
3 Because this was a new issue for ITC, it took time for ITC to gather the pertinent
4 information. Once the overall costs and issues were developed, a decision was made
5 to file for a suspension or modification of the LNP requirements because of the
6 projected costs our cooperative members would have to bear. I was not able to
7 discuss LNP deployment with Midcontinent until all aspects of deploying LNP
8 services were identified and discussed with the ITC board of directors, consultants
9 and legal counsel.

10 With respect to Ms. Lohnes' implication that I should have contacted her before
11 February 24, I note that during the January 29th conversation Ms. Lohnes did not ask
12 for a response by a specific date. Furthermore, Ms. Lohnes made no further attempt
13 to contact me between the time period of January 29th to February 24th. If my lack of
14 response was unacceptable, I would expect Ms. Lohnes to have contacted me.

15 I also note that pursuant to the Interconnection Agreement, the LNP negotiation
16 period did not end until May 2004. However, ITC informed Midcontinent of its
17 intent to file a petition for suspension of LNP on May 4, 2004, well before the end of
18 the negotiation period.

19 **Q. Did Midcontinent ever request interim number portability?**

20 A. No. The first time Midcontinent ever mentioned interim number portability was in the
21 direct testimony of W. Tom Simmons, filed on May 13, 2004.

22

1 **Q. Did Midcontinent contact you in any way to pursue negotiations of interim**
2 **number portability?**

3 A. No. Midcontinent has never requested interim number portability nor has it ever
4 asked ITC to negotiate interim number portability.

5 **Q. Are you prepared to discuss interim local number portability with Midcontinent?**

6 A. Yes.

7 **Q. After ITC informed Midcontinent that ITC would file a petition for suspension**
8 **or modification of the LNP requirement; did Midcontinent contact you for**
9 **further negotiations in connection with LNP in the Webster exchange?**

10 A. No. Since ITC informed Midcontinent that it would file a Petition for Suspension or
11 Modification, Midcontinent has not contacted ITC for further negotiations in
12 connection with LNP in the Webster Exchange.

13 **Q. What do you conclude from the fact that Midcontinent has not contacted you in**
14 **connection with negotiations for LNP in the Webster exchange since you**
15 **informed Midcontinent of ITC's intention to file a suspension petition?**

16 A. I conclude that the real purpose of Midcontinent's Motion to Compel is not to compel
17 ITC to negotiate because if negotiation is what Midcontinent really wanted, I would
18 expect them to contact me. Rather, it appears that Midcontinent hopes to influence
19 the Commission's decision on ITC's LNP suspension petition by alleging that ITC
20 engaged in "bad faith negotiations."

21 **Q. Does this conclude your testimony?**

22 A. Yes.

EXHIBIT 1

September 15, 2003

Memo

To: Ben Dickens and Jerry Heiberger

From: Dave Gerdes

Re: ITC Interconnection Agreement; Our file: 4056

What follows is what I understand to be standard number portability language from a BOC interconnection agreement which I have modified to fit our situation. I am suggesting that the language immediately below is probably sufficient for our purposes, because the internal references will yield the process outlined in the succeeding numbered paragraphs. However, if you would prefer to address the process in more detail, we can incorporate the succeeding paragraphs (in such form as we finally agree).

I have made some modifications to address the size of the exchange, most notably in paragraph 10.

D. NUMBER PORTABILITY

As provided in Act Section 251 (b)(2), the Parties shall provide Number Portability ("NP") in accordance with rules and regulations as from time to time prescribed by the FCC and the Commission. Location Routing Number (LRN) is currently being used by the telecommunications industry to provide NP, and will be used by the Parties to implement LNP between their networks. The Parties will follow the LNP (Long-term Number Portability) provisioning process recommended by the North American Numbering Council (NANC) and adopted by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the Ordering and Billing Forum (OBF). The Parties shall provide LNP on a reciprocal basis.

All of the following language implements the basic obligations described above. It is omitted here in order to use a simple number portability provision consistent with the structure of the agreement. If the parties wish, the following language can be used, with the paragraph above numbered one and indented appropriately.

2. LNP shall be provided when a Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B") and the Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) previously provided by Party A, in conjunction with the Telephone Exchange Service(s) provided by Party B. After Party B has received an appropriate authorization in accordance with Applicable Law from a Customer and sends a LSR to Party A, Parties A and B will work together to port the customer's telephone number(s) from Party A's network to Party B's network. In accordance with Applicable Law, each Party will

maintain evidence of authorizations and, upon request, provide copies of such evidence to the other.

3. When a telephone number is ported out of Party A's network, Party A will remove any non-proprietary line based calling card(s) associated with the ported number(s) from its Line Information Database ("LIDB"). Reactivation of the line-based calling card in another LIDB, if desired, is the responsibility of Party B or Party B's Customer.

4. When a Customer of Party A ports his or her telephone number(s) to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported, provided the numbers have been reserved for the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.

5. When a Customer of Party A ports his or her telephone number(s) to Party B, in the process of porting the Customer's telephone number(s), Party A shall implement the ten-digit trigger feature 48 hours prior to Party B's due date. If, in the case of Direct Inward Dialing (DID) numbers and Remote Call Forwarding numbers the LNP ten-digit trigger can not be used, the Parties shall coordinate the Customer's porting using procedures developed by the North American Numbering Council (NANC), or other 'hot cut' procedures as may be mutually agreed to. When Party A receives the porting request, the LNP ten-digit trigger shall be applied to the Customer's line before the due date of the porting activity. When the LNP ten-digit trigger can not be used, Party A and Party B must coordinate the disconnect activity. The Parties agree that changes to a scheduled port will be permitted until 5PM the day of the port and that a due date change may be required. When Party B does not require loop facilities from Party A and the LNP ten-digit trigger has been provisioned, Party A agrees to not disconnect the LNP ten-digit trigger and associated line translations until 11:59 PM on the day of the scheduled port. When a porting request of Party B requires loop facilities from Party A or when the ten-digit trigger is not available from Party A, the Parties must coordinate the disconnection of the loop and/or switch facilities from Party A's network with the activation of the loop and/or switch facilities on Party B's network.

6. The Parties shall furnish each other with the Jurisdiction Information Parameter (JIP) in the Initial Address Message (IAM), containing a Local Exchange Routing Guide (LERG)-assigned NPA-NXX (6 digits) identifying the originating switch on calls originating from LNP-capable switches.

7. Where LNP is commercially available, the NXXs (current and new) in the office shall be defined as portable, except as noted in 14.2.7, and translations will be changed in the Parties' switches to open those NXXs for database queries in all applicable

LNP-capable offices within the LATA of the given switch(es). On a prospective basis, all newly deployed switches will be equipped with LNP capability and so noted in the LERG.

8. Both Parties' use of LNP shall meet the performance criteria specified by the FCC. Both Parties will act as the default carrier to perform LRN queries for the other Party in the event that either Party is unable to perform the routing necessary for LNP, according to the terms and conditions contained in the default carrier's Tariff. Each Party has the right to block default-routed calls entering its network in order to protect the public switched network from overload, congestion, or failure propagation.

9. When a ported telephone number is disconnected, i.e., the telephone number is no longer in service by the original Customer, the ported telephone number will be released back to the donor carrier from which the telephone number had been ported. In addition, when a ported number is disconnected, both Parties shall agree to adhere to the Industry Numbering Committee (INC) Guidelines for the Aging and Administration of Disconnected Telephone Numbers, contained in document INC99-1108-024, dated November 8, 1999.

10. Each Party shall provide LNP using the following provisioning intervals for porting 20 or fewer numbers per customer:

Party B will make commercially reasonable efforts to respond to LNP requests with Firm Order Confirmation within 24 hours (excluding weekends and holidays) of receipt of valid requests; or

Party B will make commercially reasonable efforts to respond to LNP requests with query or error notification within 24 hours (excluding weekends and holidays) of receipt of invalid requests.

Porting orders will be subject to the schedule implemented under the auspices of the Commission. In the absence of such schedule, porting orders will be processed within 3 business days. When requested by Party B, Party A shall provide sufficient workforce to implement the port and to ensure necessary escalation if needed in the event of problems outside of regular working hours.

EXHIBIT 2

D. NUMBER PORTABILITY

The parties shall provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, effective not more than six months from the date of this agreement. Number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that Midcontinent reserves all rights it now has associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree upon terms and conditions for number portability as contemplated by this paragraph.

Exhibit 3

D. NUMBER PORTABILITY

The parties will attempt to negotiate the provision of ~~shall provide~~ number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than~~ within six months from the date of this agreement. To the extent that it is provided, ~~N~~number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights they it ~~now have~~s associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability, ~~as contemplated by this paragraph.~~

EXHIBIT 4

D. NUMBER PORTABILITY

The parties will ~~attempt to negotiate in good faith to achieve the provision of shall~~ provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than~~ within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights they it now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability, as contemplated by this paragraph.

Exhibit 5

D. NUMBER PORTABILITY

The parties ~~will attempt to negotiate in good faith to achieve the provision of~~ shall provide number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, ~~effective not more than within~~ six months from the date of this agreement. ~~To the extent that it is provided,~~ Number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserves all rights ~~they it now have~~ associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree ~~to provide number portability or to agree upon terms and conditions for number portability, as contemplated by this paragraph.~~

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR
APPROVAL OF AN INTERCONNEC-
TION AGREEMENT BETWEEN MID-
CONTINENT COMMUNICATIONS
AND INTERSTATE TELECOMMUNI-
CATIONS COOPERATIVE, INC.

Docket No. TC03-192

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the original and ten copies on the Commission (via Hand Delivery), and a copy of the **DIRECT PRE-FILED TESTIMONY OF JERRY HEIBERGER** in the above-named docket, upon the person(s) herein next designated, on the date below shown, by depositing copies thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON
P. O. Box 160
Pierre, South Dakota 57501

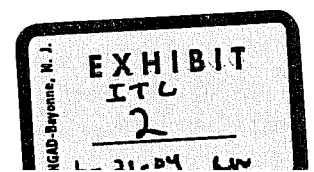
Pamela Bonrud
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 East Capitol Ave
Pierre SD 57501

Dated this 7th day of May, 2004.

Darla Pollman Rogers
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889

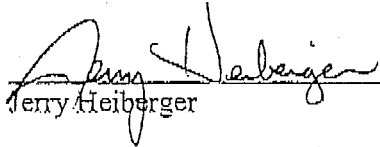
LNP Timeline

- 11/20/03 ITC begins investigating the cost and procedures for providing LNP
- 12/29/03 E-mail message from M. Lohnes regarding LNP
- 1/8/04 J. Heiberger responds to 12/29/03 message from M. Lohnes
- 1/12/04 Conference call with J. Heiberger and M. Lohnes regarding LNP
- 1/28/04 J. Heiberger leaves voice mail message for M. Lohnes regarding the costs of deploying LNP and informing her that the cost of deploying LNP will be presented to the ITC Board of Directors at the upcoming Board meeting.
- 2/24/04 E-mail message from M. Lohnes regarding LNP
- 2/25/04 J. Heiberger responds to 2/24/04 message from M. Lohnes
- 3/3/04 E-mail message from M. Lohnes regarding LNP
- 3/4/04 J. Heiberger responds to 3/3/04 message from M. Lohnes via electronic mail and letter sent via facsimile which state that ITC will file a petition for suspension of the LNP requirement.



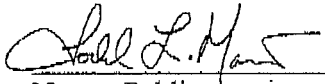
AFFIDAVIT

I, Jerry Heiberger, General Manager of Interstate Telecommunications Cooperative, Inc., affirm under penalty of perjury that the information contained in Exhibit 1, entitled "LNP Timeline" is true and correct.


Jerry Heiberger

March 29, 2004
Date

Subscribed and sworn to before me this 29th day of March, 2004.


Notary Public

MY Commission expires JANUARY 10, 2009

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July 8, 2004

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Pam Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RECEIVED

JUL 09 2004

RE: MIDCONTINENT COMMUNICATIONS
Docket: TC03-192
Our file: 4056

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Pam:

Enclosed are original and ten copies of a Motion to Dismiss the Motion to Compel Local Number Porting or Good Faith Negotiation pending in the above-entitled docket. Please file the enclosure.

With a copy of this letter, I am sending copies of the enclosure to the service list. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAG:mw

Enclosure

cc/enc: Harlan Best, Karen Cremer, Darla Rogers, Ben Dickens, Richard Coit, Talbot Wiczorek, J. G. Harrington, Mary Lohnes, Tom Simmons, Nancy Vogel

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July 8, 2004

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Pam Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: MIDCONTINENT COMMUNICATIONS
Docket: TC03-192
Our file: 4056

RECEIVED
JUL 09 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Pam:

Enclosed are original and ten copies of a Motion to Dismiss the Motion to Compel Local Number Porting or Good Faith Negotiation pending in the above-entitled docket. Please file the enclosure.

With a copy of this letter, I am sending copies of the enclosure to the service list. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosure

cc/enc: Harlan Best, Karen Cremer, Darla Rogers, Ben Dickens, Richard Coit, Talbot Wieczorek, J. G. Harrington, Mary Lohnes, Tom Simmons, Nancy Vogel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUL 09 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) TC03-192
APPROVAL OF AN INTERCONNECTION)
AGREEMENT BETWEEN MIDCONTINENT) MOTION TO DISMISS
COMMUNICATIONS AND INTERSTATE)
TELECOMMUNICATIONS COOPERATIVE INC.)

COMES NOW Midcontinent Communications ("Midcontinent") and moves to dismiss its Motion to Compel Local Number Porting or Good Faith Negotiation now pending before the Commission in this docket (the "Pending Motion") upon the following grounds and conditions:

1. Midcontinent and Interstate Telecommunications Cooperative, Inc., ("ITC") have entered into a Settlement Agreement in this docket which, among other things, provides that the pending motion be dismissed upon approval of the Settlement Agreement by the Commission. The Settlement Agreement addresses the provision of local number portability between the parties.

2. The Settlement Agreement also provides that should ITC fail to comply with either the Settlement Agreement or the Interconnection Agreement between the parties previously approved by the Commission, Midcontinent may pursue such remedies as it deems appropriate.

3. The Settlement Agreement further provides that Midcontinent is entitled to continue to prosecute its position in Docket TC04-054 concerning the provision of wireline to wireline local number portability.

4. Based upon the Interconnection Agreement and the Settlement Agreement in the above-entitled docket, the pending motion should be dismissed to enable the parties to proceed to implement their Settlement Agreement and the provisions of the Interconnection Agreement.


WHEREFORE Midcontinent prays that the Commission dismiss the pending motion subject to the conditions of the Settlement

Agreement and such other conditions as the Commission may chose to impose.

Dated this 8th day of July, 2004.

MAY, ADAM, GERDES & THOMPSON LLP

BY:


DAVID A. GERDES

Attorneys for Midcontinent

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605)224-8803

Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 8th day of July, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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Staff Analyst
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David A. Gerdes

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR)
 APPROVAL OF AN INTERCONNECTION)
 AGREEMENT BETWEEN MIDCONTINENT)
 COMMUNICATIONS AND INTERSTATE)
 TELECOMMUNICATIONS COOPERATIVE, INC.)
)

**ORDER APPROVING
 SETTLEMENT
 AGREEMENT; GRANTING
 MOTION TO DISMISS AND
 CLOSING DOCKET
 TC03-192**

On November 12, 2003, Midcontinent Communications (Midcontinent) filed for approval by the South Dakota Public Utilities Commission (Commission) an interconnection agreement between Interstate Telecommunications Cooperative, Inc. (ITC) and Midcontinent. On December 22, 2003, the Commission issued an order approving the interconnection agreement in accordance with 47 U.S.C. Section 252. On March 10, 2004, Midcontinent filed a Motion to Compel Local Number Porting or Good Faith Negotiation requesting the Commission to establish a procedural schedule, schedule an evidentiary hearing, order ITC to engage in good faith negotiations to be concluded on or before May 6, 2004, and order ITC to provide wire to wire porting not later than May 24, 2004. On March 30, 2004, ITC filed an Opposition to Motion to Compel. The Commission considered the scheduling issues at its regular meeting on April 6, 2004, and voted unanimously to establish a procedural schedule and to schedule the matter for hearing on June 21, 2004. By order dated May 4, 2004, a hearing in this matter was scheduled for June 21, 2004. The hearing was held as scheduled.

On July 6, 2004, the Commission received a Settlement Agreement from Midcontinent. On July 9, 2004, the Commission received a Motion to Dismiss from Midcontinent.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, including 49-31-3, 49-31-80 and 49-31-81 and Sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. Sections 251 and 252 and ARSD 20:10:32:39.

The Commission considered this matter at its July 20, 2004, meeting. Staff recommended that the Commission approve the Settlement Agreement and grant the Motion to Dismiss. The Commission voted to approve the Settlement Agreement and grant the Motion to Dismiss. It is therefore

ORDERED, that the Settlement Agreement is approved and is attached hereto; and it is further

ORDERED, that the Motion to Dismiss is hereby granted and this docket is closed.

Dated at Pierre, South Dakota, this 18th day of August, 2004.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Delaine Kolbo</u>
Date:	<u>8/18/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
 ROBERT K. SAHR, Chairman

Gary Hanson
 GARY HANSON, Commissioner

James A. Burg
 JAMES A. BURG, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) TC03-192
APPROVAL OF AN INTERCONNECTION)
AGREEMENT BETWEEN MIDCONTINENT)
COMMUNICATIONS AND INTERSTATE) SETTLEMENT AGREEMENT
TELECOMMUNICATIONS COOPERATIVE INC.)

Midcontinent Communications ("Midcontinent") and Interstate Telecommunications Cooperative, Inc., ("ITC"), parties in the above-entitled docket, in settlement of the issues between them in said docket, agree as follows:

DEFINITIONS

As used in this agreement, the following terms have the following meanings:

- A. "Commission" means the South Dakota Public Utilities Commission.
- B. "Party" means either Midcontinent or ITC and "Parties" means Midcontinent and ITC.
- C. "Transitional Number Portability Measure" for the purpose of this agreement as to intramodal local number portability only (in part as defined in 47 CFR § 52.21(r)) means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 47 CFR § 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF) and Direct Inward Dialing (DID).
- D. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined therein.

1. Midcontinent is operating in ITC's Webster exchange pursuant to an interconnection agreement dated November 6, 2003, and approved by the Commission by order in this docket dated December 22, 2003. Among other things, and specifically as to number portability, the agreement provides as follows:

D. NUMBER PORTABILITY

The parties will negotiate in good faith the provision of number portability on a reciprocal basis under terms and conditions to be negotiated and added to this agreement by amendment, within six months from the date of this agreement. To the extent that it is provided, number portability will be provided in accordance with the rules and regulations prescribed by the FCC and the Commission. It is agreed that ITC and Midcontinent reserve all rights they now have associated with number portability under the Act and South Dakota Law, which may be asserted should the parties be unable to agree to provide number portability or to agree upon terms and conditions for number portability.

2. The Commission now has pending before it in this docket Midcontinent's motion to compel local number porting or good faith negotiation. Subsequent to the filing of the motion, ITC filed a petition before the Commission in docket TC04-054 requesting a suspension or modification pursuant to 47 U.S.C. § 251(f) (2). Presently, the Commission has taken evidence on Midcontinent's pending motion in this docket and is taking evidence on ITC's petition in docket TC04-054. The Commission has rendered a decision in neither docket.

3. ITC agrees to provide to Midcontinent in its Webster Exchange transitional number portability measures as soon as reasonably possible, but in no event, later than August 1, 2004. Midcontinent will provide local number portability in return at a technical level at least equal to that of ITC. Cost recovery for transitional number portability will be on a reciprocal basis as negotiated in good faith by the Parties, provided that if the parties have not reached agreement on cost recovery by August 1, 2004, either party may petition the Commission to establish a cost recovery mechanism for transitional number portability pursuant to applicable rules of the Commission and the FCC. Thereafter, the parties further agree to abide by the decision and order of the

Commission in Docket TC04-054 with regard to the provision of long term number portability.

4. Upon the approval of this agreement by the Commission, Midcontinent agrees to dismiss its motion to compel local number porting or good faith negotiation now pending in this docket, provided that should ITC fail to comply with either this agreement or the aforesaid interconnection agreement in the Webster exchange mentioned in paragraph 1, Midcontinent is free to pursue such remedies before the Commission, or otherwise, as it deems appropriate.

5. Nothing in this agreement is intended to affect the ability of Midcontinent to continue to appear in docket TC04-054 to advocate its position on the provision of wireline to wireline local number portability and its view of the relief which the Commission should provide to ITC and other rural telecommunications carriers in the series of dockets generally known as the local number portability dockets now pending before the Commission.

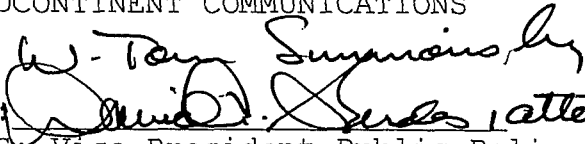
6. The parties understand and agree that this agreement will be filed with the Commission and will at all times be subject to review by the Commission. Should any such review reject any portion of this agreement, render it inoperable or create any ambiguity or requirement for further amendment, the parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

7. This agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof. This agreement will become effective upon approval by the Commission.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective authorized representatives.

MIDCONTINENT COMMUNICATIONS


Date: 2/1/04

BY: 
ITS: Vice President-Public Policy

INTERSTATE TELECOMMUNICATIONS

COOPERATIVE, INC.

Date: June 30, 2004

BY: 
ITS: General Manager