

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

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IN THE MATTER OF THE COMPLAINT )		
OF MIDCONTINENT COMMUNICATIONS, )		TC10-096
KNOLOGY OF THE PLAINS, INC., )		
AND KNOLOGY OF THE BLACK HILLS, )		<b>ANSWER TO AMENDED COMPLAINT</b>
LLC, AGAINST MCI COMMUNICATIONS )		
SERVICES INC. D/B/A VERIZON )		
BUSINESS SERVICES FOR UNPAID )		
ACCESS CHARGES )		

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MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), by and through its counsel of record and in accordance with A.R.S.D. 20:10:01:09, files its answer to the new claim raised by means of the Amended Complaint filed by Midcontinent Communications (“Midcontinent”) on February 3, 2010. The Commission granted Midcontinent’s motion to amend its original complaint to add this claim by Order issued February 28, 2011. Verizon responds here only to the new count Midcontinent added to its original Complaint; in all other respects, Midcontinent’s Amended Complaint remains the same as its original Complaint, so there is no need for Verizon to repeat its response to that other material here. To the extent a response is required, Verizon incorporates its by reference its initial responses to paragraphs 1 through 39.

**ANSWER TO NEW MATERIAL ALLEGATIONS IN THE AMENDED COMPLAINT**

Any allegations of the Complaint not specifically admitted are denied.

**COUNT FOUR**

**BREACH OF CONTRACT**

40. Paragraph 40 of Midcontinent’s Amended Complaint raises no new allegations, so no response is required. To the extent a response is required, Verizon incorporates by reference its answers to paragraphs 1 through 39 of the original Complaint.

41. Paragraph 41 contains characterizations of Exhibits 12 and 13, attached to Midcontinent's Amended Complaint; these exhibits speak for themselves, so no response is required.

42. Paragraph 42 contains characterizations of Exhibits 12 and 13, attached to Midcontinent's Amended Complaint; these exhibits speak for themselves, so no response is required. Verizon admits that neither party has provided written notice indicating its intent to terminate the Agreement.

43. Paragraph 43 contains characterizations of section 4.1 of the Agreement attached to Midcontinent's Amended Complaint; the Agreement speaks for itself, so no response is required.

44. Paragraph 44 quotes section 1.9 the Agreement attached to Midcontinent's Amended Complaint; the Agreement speaks for itself, so no response is required.

45. Paragraph 45 quotes section 1.8 the Agreement attached to Midcontinent's Amended Complaint; the Agreement speaks for itself, so no response is required.

46. Paragraph 46 quotes section 10 of the Agreement attached to Midcontinent's Amended Complaint; the Agreement speaks for itself, so no response is required.

47. Verizon lacks sufficient information to either admit or deny whether Midcontinent has accurately transcribed any comments made by Mr. Koenecke at the January 4, 2011, hearing on the Request for Interim Relief. Verizon admits that federal district courts in Washington, DC and New York have ruled that tariffed access rates do not apply to traffic in Internet protocol format and that those rulings support Verizon's position that it does not owe Midcontinent tariffed intrastate switched access charges on IP-formatted traffic.

48. Verizon lacks sufficient information to either admit or deny whether Midcontinent has accurately transcribed any statements made by Mr. Groves at the January 4, 2011, hearing on

the Request for Interim Relief. Verizon admits that the FCC has not yet determined what intercarrier obligations apply to IP-originated and IP-terminated traffic, but the FCC last month initiated a rulemaking to decide that issue in the near future.<sup>1</sup> Verizon admits that federal district courts in New York and Washington, DC concluded that access tariffs do not apply to VoIP traffic, and that those decisions contributed to the evolving legal guidance with respect to intercarrier compensation obligations for IP-formatted traffic.

49. Denied. Midcontinent has consistently mischaracterized Verizon's position in the proceeding as being based on a purported "change of law."

50. Verizon denies that it had any obligation to provide any notice contemplated by sections 10 and 22 of the Agreement. Verizon did not indicate that a change of law has occurred that affects the Agreement.

51. To the extent Paragraph 51 characterizes Midcontinent's "previous filings," no response is needed, because those filings speak for themselves. Verizon admits that there has been no change of law that would implicate the process described in section 10 of the Agreement, but denies the statement in paragraph 51 to the extent it indicates that reasoning in unspecified "previous filings" of Midcontinent was correct or well grounded.

52. Verizon denies paragraph 52, including each of its subparts. Nothing in the Agreement requires Verizon to pay Midcontinent's tariffed switched access rates on VoIP traffic, which is not subject to access charges pursuant to applicable law. In addition, Verizon has never

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<sup>1</sup> See *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 ("ICC/USF Notice"), ¶¶ 603-619 (Feb. 9, 2011).

claimed a “change of law” event,” so it was not required to give any notices under the Agreement.

Midcontinent’s prayer for relief, which appears at page 14 of its Amended Complaint, requires no response. To the extent a response is required, Verizon denies that Midcontinent is entitled to any of the relief it seeks.

Dated: March 18, 2011.

MAY, ADAM, GERDES & THOMPSON LLP

BY:



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## CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 18th day of March, 2011, 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:

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