

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

**IN THE MATTER OF PETITION FOR ARBITRATION)
OF AN INTERCONNECTION AGREEMENT BETWEEN) TC21-124
MIDCONTINENT COMMUNICATIONS AND)
JAMES VALLEY COOPERATIVE TELEPHONE)
COMPANY)**

MOTION TO COMPEL

Midcontinent Communications (“Midco”), by its attorneys, hereby moves to compel James Valley Cooperative Telephone Company (“James Valley”) to respond to Midco’s April 20, 2022 discovery requests in this proceeding.¹

Midco propounded three substantive interrogatories (and related requests for production) in the April 20 Requests. In its May 3, 2022 responses to the April 20 Requests, James Valley objected to all three requests.² Although there is no basis for James Valley’s objections to any of the interrogatories, Midcontinent is limiting this motion Interrogatory 4 and the related request for production (Request 4) because James Valley did not provide any substantive response to that interrogatory or the request, while it did provide a response to Interrogatory 2 and a partial response to Interrogatory 3.³ As shown below, James Valley’s objection does not provide any

¹ Midco Second Discovery Requests to James Valley, April 20, 2022 (the “April 20 Requests”).

² James Valley responded to Interrogatory 2, which sought information on any witnesses it intended to call at the hearing in this proceeding, and partially responded to Interrogatory 3, which sought information on carriers with which it exchanges traffic. It did not provide any response to Interrogatory 4. James Valley Response to Midco Second Discovery Requests, May 3, 2022 at 1-2 (“James Valley May 3 Response”). By agreement with Midco, James Valley filed its responses one day after the initial deadline in light of James Valley’s mistaken belief that Midco had not submitted its discovery requests on time.

³ Midco has determined that it can obtain additional information concerning Interrogatory 3 from the James Valley response to earlier interrogatories. While this information will not address all of Interrogatory 3, Midco is limiting this motion to Interrogatory 4 in the interests of conserving Commission resources.

basis for it to refuse to respond, and it should be compelled to provide a full response to Interrogatory 4 and Request 4 on an expedited basis.

Interrogatory 4 asks for James Valley to identify any agreements it has with other carriers that include the language it has proposed for Section 10 of the General Terms and Conditions of the proposed interconnection agreement, and provide information concerning those agreements.⁴ James Valley objected on the ground that the interrogatory was not relevant.⁵

James Valley plainly is wrong, as the interrogatory is directly relevant to an open issue in this proceeding. As described in Midco's response to James Valley's list of disputed issues, the language quoted in the interrogatory is the language James Valley has proposed for the compliance with laws provision of the interconnection agreement, and Midco has proposed alternative text.⁶ Midco's interrogatory is intended to explore the question of whether James Valley has included the language it proposes in other agreements or if the language Midco proposes is more common. As this goes to an open issue in this proceeding, it is entirely relevant. Indeed, James Valley is no position to determine what arguments Midco will make about that issue.

It also is relevant because the central question concerning disputed issues is what is reasonable, and one measure of reasonableness is whether comparable provisions exist in other agreements.⁷ Midco will be offering testimony on this point, and James Valley's response to this

⁴ Compare April 20 Requests at 4 with Midcontinent Response to James Valley's List of Disputed Issues, April 19, 2022, Attachment 1 at 4 ("Midco Issue List Response").

⁵ James Valley May 3 Response at 2. James Valley also made a substantive argument concerning its proposed text. *Id.*

⁶ Midco Issue List Response at 2 & Attachment 1 at 4.

⁷ See 47 U.S.C. §§ 201(b), 202(a) (requiring just and reasonable and not unreasonably discriminatory rates, terms, and conditions for services governed by Title II of the Communications Act). Midco notes that, elsewhere in its response, James Valley claims that there are only legal issues remaining in this proceeding. James Valley May 3 Response at 2.

question will assist in preparing that testimony.

Finally, the substantive arguments concerning this issue in James Valley's objection make it clear that the interrogatory is relevant to this proceeding. James Valley claims that its language "simply incorporates" the Commission's March 18 order into the agreement, but does not explain why its language (which does not mention the March 18 order at all) is superior to the language proposed by Midcontinent. To the extent that James Valley has not obtained similar language in other agreements with carriers, it suggests that there is no need to include its preferred text to ensure compliance with regulatory requirements.⁸ Moreover, James Valley's claims as to its intent and the meaning of its proposed language are not a reason that it can refuse to answer an interrogatory.

As the Commission is aware, the hearing in this proceeding is scheduled for May 24 and prefiled testimony is due on May 10. Consequently, Midco requests expedited action on this motion to ensure that Midco has all of the relevant information concerning the identified issues in this proceeding in time to incorporate that information into its presentation.

While James Valley is entitled to argue the issues in any way it wishes, it is not in a position to decide how Midco will argue them. Issues of reasonableness, by their nature, include both legal and factual components, as determining whether an action or a provision of an agreement is reasonable necessarily includes consideration of the circumstances and what parties in similar situations have done.

⁸ James Valley also claims, without any basis at all, that Midco does not intend to meet its regulatory obligations. James Valley May 3 Response at 2. Even if this were true, James Valley does not explain how its language addresses that issue in a way that Midco's proposed language does not, or why James Valley's language is necessary in light of the remedies available to the Commission for violation of its rules and orders.

For all these reasons, the Commission should order James Valley to provide responses to Interrogatory 4 and Request 4, and should do so on an expedited basis.

Respectfully submitted,
Midcontinent Communications

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