

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

IN THE MATTER OF THE APPROVAL OF)	STAFF’S RESPONSE TO
THE PETITION FOR ARBITRATION OF)	MOTION TO DISMISS
AN INTERCONNECTION AGREEMENT)	
BETWEEN MIDCONTINENT)	TC21-124
COMMUNICATIONS AND)	
JAMES VALLEY COOPERATIVE)	
TELEPHONE COMPANY)	

On December 22, 2021, James Valley Cooperative Telephone Company (James Valley) filed a Motion to Dismiss Untimely Petition. In its Motion, James Valley alleges that Midcontinent Communications (Midco) failed to file the Petition within the timeframe provided by 47 USC § 252.

47 USC § 252(b)(1) provides that a party may petition the state commission for arbitration between 135 and 160 days from the time interconnection negotiations were requested. The premise of the Motion is that the letter sent from Midco to James Valley on June 3, 2021, triggered the timeline. The counter argument is that the trigger was the July 16, 2021 letter.

Staff concurs with James Valley’s interpretation of the strict window for filing for arbitration. Whiles caselaw regarding the expiration of the arbitration window is limited, there is precedent to support the strict application of the filing window.

See, *Verizon New York v. Choice One Communications*, 499 F.Supp.2d 326, 330 (S.D.N.Y.2007) (Court stating that the request triggered a 25-day window, “ending 160 days after [the interconnection] request. ...Therefore, the window closed on the 160th day...”).

However, Staff disagrees with James Valley as to the implications of the July 16 Letter. Under James Valley’s argument, if Midco missed the window, Midco would need to send another letter and restart it. It makes little sense to assume that Midco could restart the clock with another letter at this point in time but could not have restarted in on July 16. If James

Valley believes that the clock can be restarted, then the July 16 Letter did just that.

In addition, while Midco stated in the June 3 Letter that the letter was “intended to trigger the periods for negotiation and arbitration” (See Exhibit 2 to Petition), James Valley responded to Midco stating that the June 3 letter was “procedurally deficient”. James Valley cannot claim the first letter was procedurally deficient and now argue that it was not deficient in so far as it triggered the applicable timeline. The June 3 Letter having been rejected as deficient by James Valley, Midco sent a new, significantly more detailed request via the July 16 Letter.

The July 16 Letter was materially different than the June 3 Letter. In the June 3 Letter, Midco specifically stated that it was requesting a “Section 251(c) Facilities based Interconnection Agreement.” The request made via the July 16 Letter was a new and different request. The July 16 request was for “section 251(a) and (b)” to provide wholesale service. Therefore, it appears that Midco essentially let the June 3 request for facilities-based interconnection die and instead made a new request for interconnection for wholesale purposes. These were two distinct requests, triggering two distinct negotiation and arbitration periods.

CONCLUSION

For the reasons stated above, Staff requests that the Motion to Dismiss be denied.

Dated this 28th day of December 2021.



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