

# GIVENS PURSLEY LLP

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July 17, 2009

VIA ELECTRONIC MAIL and US MAIL ([jean.jewell@puc.idaho.gov](mailto:jean.jewell@puc.idaho.gov))

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
P.O. Box 83720  
Boise, ID 83720-0074

MID T-09-01

Re: Revised Letter of Information regarding Midvale Telephone ESOP Conversion  
Our File: 1614-87

Dear Ms. Jewell:

On February 20, 2009, I wrote to the Idaho Public Utilities Commission (the "Commission") requesting verification from the Commission that no approvals would be required in connection with Midvale Telephone Exchange, Incorporated's plan to convert ownership of Midvale Telephone Exchange, Incorporated ("Midvale") to an Employee Stock Ownership Plan ("ESOP"). I have attached a copy of that letter hereto. By Order 30765, dated April 3, 2009, the Commission determined that no approvals would be required. A copy of that Order is also attached hereto.

I am writing at this time because Midvale desires to change the proposed structure of the ESOP transaction, and I would again like to verify that no Commission approvals will be required for the revised structure. At the time of my last letter, we proposed that Midvale would adopt an ESOP and create the ESOP trust. Then Midvale would create a holding company that would be a parent company of Midvale, organized to own all of the issued and outstanding shares of Midvale stock. This parent company would exchange parent company shares for all of the shares of Midvale held by Lane Williams, the estate of Shirley Archer and the ESOP so that the parent company would own all of the issued and outstanding shares of Midvale stock. Lane Williams and the estate of Shirley Archer would then own shares of parent company stock. The ESOP would then purchase all of the shares of the parent company held by Lane Williams

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and the estate of Shirley Archer, using the annual contribution made by Midvale to the ESOP. At the completion of the transaction, Midvale would be wholly owned by the new parent company and the new parent company would be wholly owned by the ESOP trust, in trust for all eligible employees.

At this time we are proposing that instead of creating a parent company, Midvale would create a wholly owned subsidiary. Midvale would then transfer all of its assets and liabilities to this operating subsidiary ("Midvale Subsidiary") in a tax-free Section 351 capitalization. As a result of this transaction, all of the existing Midvale employees will become employees of Midvale Subsidiary. After the transaction, Midvale will have no assets other than 100% of the stock of Midvale Subsidiary. Midvale Subsidiary would then adopt the ESOP and create the ESOP trust. The ESOP would purchase \$400,000 of Midvale stock from Lane Williams and the Estate of Shirley Archer on a pro rata basis. Coincident with the ESOP purchase, Midvale will redeem all of the remaining Midvale stock owned by Lane Williams and the Estate of Shirley Archer. The purchase price for the redemption will be made on an installment basis ("Redemption Notes"). Each year during the term of the Redemption Notes, Midvale Subsidiary will make contributions to the ESOP. The ESOP will use the contributions to subscribe for and purchase stock of Midvale. At the end of the day, Midvale will have no operating liabilities or assets, only the Redemption Notes to the current shareholders. The ESOP will be the owner of Midvale. Midvale will be the sole owner of Midvale Subsidiary, which is the operating entity holding all current assets and liabilities of Midvale (but no additional debt as a result of the ESOP). I have attached an ESOP ownership structuring chart to illustrate how this transaction will be structured.

At this time, we request that the Commission provide Midvale with some acknowledgement that the Commission will not require any official approval of this transaction and that Midvale may proceed as discussed above. If that will not be the case, Midvale will appreciate receiving instructions regarding any information or documentation the Commission will need, or any procedures the Commission will require in order to provide its approval.

I look forward to hearing from you soon. If you have any questions or need any additional information with regard to this matter, please feel free to contact me.

Sincerely,



Cynthia A. Melillo

CAM

cc: Lane Williams (via Electronic Mail)  
P.J. Carstens (via Electronic Mail)  
Terri Carlock (via Electronic Mail – [terri.carlock@puc.idaho.gov](mailto:terri.carlock@puc.idaho.gov))

Enclosures

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February 20, 2009

VIA ELECTRONIC MAIL and US MAIL ([jean.jewell@puc.idaho.gov](mailto:jean.jewell@puc.idaho.gov))

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
P.O. Box 83720  
Boise, Idaho 83720-0074

Re: Letter of Information regarding Midvale Telephone ESOP Conversion  
Our File: 1614-87

Dear Ms. Jewell:

I am writing to provide information to the Idaho Public Utilities Commission (the "Commission") regarding Midvale Telephone Exchange, Incorporated ("Midvale"), an entity regulated by the Commission, with regard to its adoption of an Employee Stock Ownership Plan ("ESOP"). Midvale is currently owned by two shareholders: Lane Williams and Shirley Archer. Ms. Archer recently passed away and the shares are being held by her estate. To ensure the ongoing operations of Midvale, Mr. Williams has pursued the option of creating an ESOP so Midvale can be owned by those who have devoted and continue to devote their time to operating the business, and to ensure that Midvale will continue in its current form rather than ultimately being sold to a third party.

We are not aware of any statutes, rules or regulations governing the Commission's relationship with Midvale that require approval of the proposed change of ownership of the stock of Midvale, but we wanted to inform the Commission of such change and to verify that no approvals are needed. Midvale's proposed plan to convert to an ESOP does not create any changes (other than ownership) with regard to Midvale's operations. Midvale remains the owner of all of its operating assets, it retains all of its current debt obligations and it does not take on any new debt obligations which require the approval of the Commission. I have

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attached an ESOP ownership structuring chart to illustrate how this transaction will be structured, but in a nutshell, this is what Midvale is proposing:

First, Midvale would adopt an ESOP and create the ESOP trust. Essentially, the ESOP trust is a benefit/retirement fund for Midvale's employees. Midvale would make a contribution every year to this retirement fund. The amount that can be contributed is governed by federal regulations both with respect to Midvale's existing loans with the Rural Utilities Service ("RUS") and also under the laws governing ESOPs. This contribution is no different than any other company contribution to an employee benefit plan and is treated the same way for all practical purposes. The contribution in the first year would likely be in the form of Midvale stock. Second, we would create a holding company that would be a parent company of Midvale, organized to own all of the issued and outstanding shares of Midvale stock. This parent company would exchange parent company shares for all of the shares of Midvale held by Lane Williams, the estate of Shirley Archer and the ESOP so that the parent company would own all of the issued and outstanding shares of Midvale stock. Lane Williams and the estate of Shirley Archer would then own shares of parent company stock. The ESOP would then purchase all of the shares of the parent company held by Lane Williams and the estate of Shirley Archer, using the annual contribution made by Midvale to the ESOP. At the completion of the transaction, Midvale would be wholly owned by the new parent company and the new parent company would be wholly owned by the ESOP trust, in trust for all eligible employees.

Under this proposed structure, Midvale will take on no new debt, nor will it transfer any of its operating assets. Midvale would continue to be the operating company, owning and using its assets to provide the services it currently provides. The only "obligation" Midvale has is to make annual contributions to the ESOP, the amount of which is governed under ESOP rules as well as RUS rules.

At this time, we request that the Commission provide Midvale with some acknowledgement that the Commission will not require any official approval of this transaction and that Midvale may proceed as discussed above. If that will not be the case, Midvale will appreciate receiving instructions regarding any information or documentation the Commission will need, or any procedures the Commission will require to provide its approval.

I look forward to hearing from you soon. If you have any questions or need any additional information with regard to this matter, please feel free to contact me.

Sincerely,



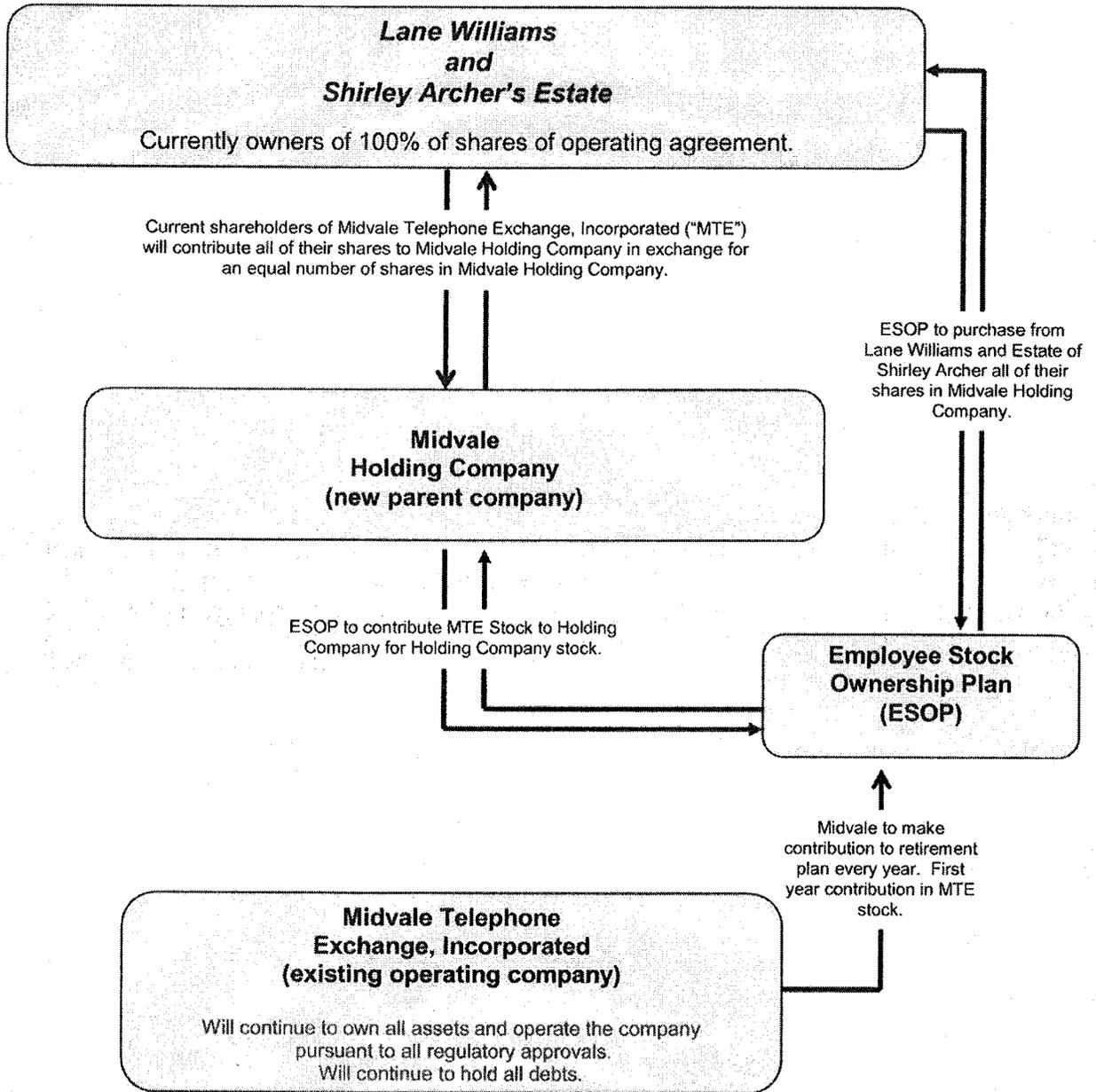
Cynthia A. Melillo

CAM

cc: Lane Williams (via Electronic Mail)  
Terri Carlock (via Electronic Mail – (terri.carlock@puc.idaho.gov))

Enclosure

# ESOP TRANSACTION STRUCTURE



**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF MIDVALE</b>	)	
<b>TELEPHONE EXCHANGE'S LETTER</b>	)	<b>CASE NO. MID-T-09-01</b>
<b>PETITION FOR A DECLARATORY ORDER</b>	)	
<b>REGARDING MIDVALE'S ADOPTION OF</b>	)	
<b>AN EMPLOYEE STOCK OWNERSHIP</b>	)	<b>ORDER NO. 30765</b>
<b>PLAN</b>	)	
	)	

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On February 20, 2009, Midvale Telephone Exchange, Inc. filed a "Letter Petition" advising the Commission that Midvale proposes to adopt an Employee Stock Ownership Plan (ESOP) and create an ESOP Trust for Midvale's employees. Midvale states that it does not believe that the Commission is required to approve the proposed ESOP transaction. However, in an abundance of caution, Midvale requests the Commission issue an Order affirming that the Commission does not need to approve the transaction. Midvale is generally subject to our regulatory authority under Title 61 of the Idaho Code. *See Idaho Code §§ 61-121 and 61-129.*

Based upon the Letter Petition and the Commission Staff's review, we find that Midvale's adoption of an ESOP in this instance does not require Commission approval. However, we shall direct Midvale to file the final ESOP documents with the Commission.

**THE LETTER PETITION**

Midvale asserts in its Letter Petition that it is currently owned by two shareholders: Lane Williams and Shirley Archer. Ms. Archer recently passed away and her shares are being held by her estate. "To ensure the ongoing operations of Midvale" Telephone, Mr. Williams is pursuing the adoption of an ESOP to ensure that the Company can be owned by employees who have and are operating the Company. Adoption of an ESOP would ensure that the Company's operations continue in the current form rather than ultimately being sold to a third party.

Other than ownership of the shares, Midvale asserts that the plan to adopt an ESOP does not create any changes with regard to Midvale's operations. "Midvale remains the owner of all of its operating assets, it retains all of its debt obligations and it does not take on any new debt obligations which require the approval of the Commission." Letter Petition at 1.

Midvale proposes to first adopt an ESOP and then create the ESOP Trust. The ESOP Trust "is a benefit/retirement fund for Midvale's employees. Midvale would make a contribution

every year to this retirement fund.” *Id.* at 2. Midvale asserts that the annual contribution to the ESOP Trust is governed by federal regulations regarding Midvale’s existing loans with the Rural Utilities Service (RUS) and federal laws governing ESOPs. The Company maintains that the contributions to the ESOP Trust are no different than any other company contribution to an employee benefit plan. Midvale states that the contributions in the first year will likely be in the form of Midvale stock. *Id.* at 2.

Following the adoption of the ESOP and creation of the ESOP Trust, Midvale will then create a holding company that will be a parent company of Midvale. The parent company will be organized to own all of the issued and outstanding shares of the Midvale stock. The parent company will exchange parent shares for “all of the shares of Midvale held by Lane Williams, the estate of Shirley Archer and the ESOP so that the parent company would own all of the issued and outstanding shares of Midvale stock.” *Id.* The ESOP will then purchase all of the shares of the parent company held by Lane Williams and Ms. Archer’s estate, using the annual contributions made by Midvale to the ESOP. “At the completion of the transaction, Midvale would be wholly owned by the new parent company and the new parent company would be wholly owned by the ESOP Trust, in trust for all eligible employees.” *Id.*

Under the proposed structure and transaction, Midvale will not take on any new debt nor will it transfer any of its operating assets. Midvale will continue to be the operating company, utilizing its assets to provide telecommunications services. “The only ‘obligation’ Midvale [will have] is to make annual contributions to the ESOP, the amount which is governed under ESOP rules as well as RUS rules.” *Id.*

#### STAFF REVIEW

Staff first recommended that the letter request be treated as a Petition for a Declaratory Order pursuant to Rule 101. IDAPA 31.01.01.101 (persons seeking a declaratory ruling from the Commission must file a Petition for Declaratory Order). After reviewing Midvale’s Letter Petition, Staff concluded that the proposed ESOP transaction does not require Commission approval under *Idaho Code* § 61-901. Section 61-901 requires that the Commission approve “instruments of security” pertaining to utility assets. Based upon Midvale’s assertion that operation of the Company will be unchanged and adoption of the ESOP Trust will not impair the Company’s assets, Staff maintained that the securities provisions of the Public Utilities Laws would not apply. *Idaho Code* §§ 61-901 *et seq.* Based upon the circumstances

outlined in Midvale's Petition, Staff viewed the proposed ESOP as essentially a personal estate planning transaction. As such, "the annual contributions to the ESOP trust should not be included in the revenue requirement for Midvale in its next rate case. To verify that the final ESOP structure and plan is consistent with the proposal, Staff recommends that all Documentation of the final ESOP structure and legal documents be filed with the Commission." Staff Recommendations at 2.

### DISCUSSION AND FINDINGS

Based upon our review of the Letter Petition and Staff's recommendation, the Commission finds it appropriate to treat Midvale's letter as a Petition for Declaratory Order. Rule 101, IDAPA 31.01.01.101. We further find that Midvale has provided sufficient information for us to decide the request. Based upon our review, the Commission finds that adoption and creation of an ESOP Trust, as set out in the Letter Petition, does not require Commission approval. As Midvale asserted, and Staff endorsed, the utility assets will continue to be owned and operated by Midvale. Midvale shall also retain all of its current debt obligations and will not be required to take on new debt by creation of an ESOP.

The Commission also adopts Staff's recommendation that Midvale file the final ESOP documents with the Commission. The Commission makes no findings regarding the ratemaking treatment of annual contributions to the ESOP.

### ORDER

IT IS HEREBY ORDERED that Midvale Telephone Exchange, Inc.'s letter be treated as a Petition for Declaratory Order pursuant to Rule 101.

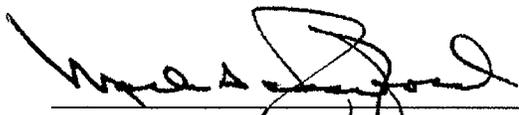
IT IS FURTHER ORDERED that Midvale's plan to adopt an ESOP and create an ESOP Trust does not require Commission approval under *Idaho Code* § 61-901 *et seq.* At such time as Midvale completes its ESOP transaction, it shall file a copy of the final ESOP documents with the Commission.

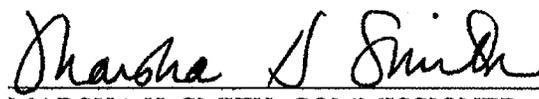
IT IS FURTHER ORDERED that the Commission makes no finding regarding the applicable ratemaking treatment for Midvale's annual contributions to the ESOP.

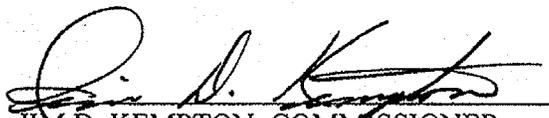
THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. MID-T-09-01 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in

this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

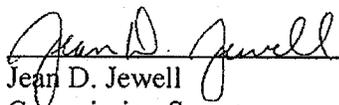
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3<sup>rd</sup> day of April 2009.

  
MACK A. REDFORD, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
JIM D. KEMPTON, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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# REVISED ESOP TRANSACTION STRUCTURE

