

**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.

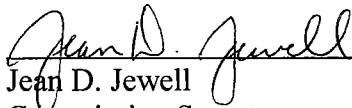
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3<sup>rd</sup> day of April 2009.

  
MACK A. REDFORD, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
JIM D. KEMPTON, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

bls/O:MID-T-09-01\_dh