

**CYNTHIA A. MELILLO PLLC**  
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IDAHO PUBLIC  
UTILITIES COMMISSION

July 13, 2012

***Via Electronic Mail***

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, ID 83702

Re: IPUC Case No. MID-T-09-03: Order No. 30969

Dear Ms. Jewell:

As you know, I represent Midvale Telephone Exchange, Incorporated ("MTE") in the above referenced matter. Finally, more than two and a half years after the Idaho Public Utilities Commission (the "Commission") issued Order No. 30969, MTE has secured the approval of all regulatory authorities and lenders to allow the transfer of assets and liabilities from MTE to Midvale Telephone Company ("MTC"), a wholly owned subsidiary. Attached is the order from the Arizona Corporations Commission dated January 6, 2012, approving the transfer of assets and the Arizona Certificate of Convenience and Necessity, and a letter from the United States Department of Agriculture Rural Development, dated July 2, 2012, approving the transfer on behalf of the Rural Utilities Service ("RUS"). This letter constitutes the final approval needed for MTE to complete the transfer of assets and liabilities. MTE has paid all of its outstanding obligations to the Rural Telephone Finance Cooperative, so approval from RTFC is no longer required.

The purpose of this letter is to inform you that effective as of July 27, 2012, all assets and liabilities of MTE will be transferred to MTC in exchange for MTC stock, and to request that the Commission take all actions necessary to transfer Certificate 254 from MTE to MTC. MTE and MTC will work with Commission staff to resubmit schedules and tariffs within the next thirty (30) days pursuant to Order No. 30969 to reflect the change in ownership structure.

Ms. Jean Jewell  
July 13, 2012  
Page 2

If you have any questions or require further information, please contact me at (208) 577-5747 or by e-mail at [cam@camlawidaho.com](mailto:cam@camlawidaho.com).

Sincerely,

  
Cynthia A. Melillo

CAM  
Enclosures

Cc: Steve Child (via electronic mail)

JAN 12 2011

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE  
Chairman  
BOB STUMP  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
PAUL NEWMAN  
Commissioner  
BRENDA BURNS  
Commissioner

Arizona Corporation Commission

DOCKETED

JAN - 6 2012

DOCKETED BY me

IN THE MATTER OF THE APPLICATION  
OF MIDVALE TELEPHONE COMPANY,  
INC. FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND  
MIDVALE TELEPHONE EXCHANGE  
INC'S APPLICATION FOR ARS 40-285  
TRANSFER OF ASSETS AND  
APPLICATION FOR WAIVER OF  
SLAMMING RULES

DOCKET NOS. T-02532A-10-0207  
T-20741A-10-0207

DECISION NO. 72728

ORDER

Open Meeting  
December 13 and 14, 2011  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 19, 2010, Midvale Telephone Exchange, Inc. ("Midvale") and Midvale Telephone Company, Inc. ("MTCI") (together "Applicants") filed an application with the Arizona Corporation Commission ("Commission") requesting:

- a. Approval of the transfer of Midvale's facilities-based Incumbent Local Exchange Carrier ("ILEC") Certificate of Convenience and Necessity ("CC&N") to MTCI;
- b. Approval of the transfer of assets from Midvale to MTCI;
- c. Approval of the transfer of local exchange customers from Midvale to MTCI; and
- d. The granting of a limited waiver of the Commission's Slamming rules.

2. On August 17, 2010, in response to Staff Data Request STF 1.7, the Applicants also requested that Midvale's Eligible Telecommunications Carrier ("ETC") designation be transferred to MTCI.

1           3. All of Midvale's stock is currently owned by Mr. Lane Williams ("Mr. Williams")  
2 and the Estate of Ms. Shirley Archer ("the Estate") and each owns fifty percent (50%) of the total  
3 shares. To ensure the ongoing operations of Midvale in its current form, Mr. Williams and  
4 Midvale, by and through its Board of Directors, have adopted an Employee Stock Option Program  
5 ("ESOP") so the employees who operate the business will own Midvale. The Applicants represent  
6 that this transaction will have little to no impact on customers, services and employees. Midvale  
7 asserts that the tax advantages of the proposed transaction are substantial.

8           4. Midvale proposed the following structure to facilitate the transfer of ownership  
9 from its current owners to the ESOP, which will serve to benefit Midvale's current employees:  
10 Effective December 22, 2008, Midvale adopted an ESOP plan and trust. Upon obtaining  
11 Commission approval, Midvale will transfer all of Midvale's assets, liabilities, public licenses,  
12 employees and the CC&N to MTCI in a tax-free Section 351 capitalization in exchange for all the  
13 issued and outstanding shares of MTCI stock. Following the transfer, the ESOP would acquire a  
14 portion of the Midvale stock and redeem the remainder of the shares by delivery to Mr. Williams  
15 and the Estate, a promissory note for the full value of their remaining shares. To date, the ESOP  
16 has \$800,000 set aside for stock purchase of Midvale. The annual contributions for the ESOP  
17 stock purchase are from tax savings. The transaction has changed slightly from what was originally  
18 proposed, as explained by the Applicants in response to Staff Data Request ("SDR") CSB 2.5 as  
19 follows:

20           Due to the passage of time, there has been a little change in the structure here from  
21 what was initially proposed. Since Midvale has been paying into the ESOP for the  
22 past two years, the ESOP is holding about \$800,000 in cash. Thus, rather than a  
23 promissory note from Midvale for the full amount of the stock, the ESOP will  
24 purchase directly from Lane Williams as many shares as can be purchased for the  
25 \$800,000. The exact amount will be dependent on a determination of the fair  
26 market value at the time of purchase. The trustee for the ESOP will determine the  
27 amount. Generally speaking, the full value of the issued and outstanding shares is  
28 estimated to be about \$4,000,000, but each purchase will require a new

1 determination of fair market value. Lane Williams will purchase the shares held by  
2 the Estate of Shirley Archer. Midvale and/or the ESOP will then enter into an  
3 option agreement to purchase the remaining shares held by Lane Williams. No  
4 purchase will occur until a little over a year from the date Lane Williams purchases  
5 the shares from the Estate. At that time a promissory note will be made by Midvale  
6 to Mr. Williams. The amount will depend on the determination of fair market value  
7 and the shares remaining to be purchased. The interest rate will be the market rate  
8 at the time. Terms will be up to ten years.

9 5. After the transaction is complete, Midvale's only asset will be 100% ownership  
10 interest in MTCI and no liabilities other than obligation for payments under the promissory note.  
11 In addition, MTCI will adopt the ESOP plan and trust and contribute funds to the ESOP annually  
12 as a retirement fund contribution for its employees. The ESOP will use MTCI's annual  
13 contributions to acquire a portion of the Midvale stock held by Mr. Williams. Ultimately, the  
14 ESOP, in trust for all MTCI employees, would own all of Midvale's shares of stock and Midvale  
15 would own all of MTCI's.

16 6. The Applicants state that MTCI will provide the same telecommunications services  
17 to Midvale's customers, customers will continue to receive their existing telecommunications  
18 services at the same rates, terms, and conditions and the only apparent change to customers will be  
19 in the change of the name of the customers' service provider. The Applicants further state that the  
20 transfer will be transparent and the service will be seamless and uninterrupted to customers and  
21 that MTCI employees and management will continue providing the same telecommunications  
22 services as were provided prior to the transaction.

### 23 **The Applicants**

24 7. Midvale is a privately-held Idaho Corporation authorized to conduct business in  
25 Arizona as a Foreign Corporation. Its principal office is located in Midvale, Idaho. Midvale was  
26 granted a CC&N as an ILEC to provide facilities-based local exchange telecommunications  
27 services on October 29, 1992, in Decision No. 58048. According to its March 31, 2010,  
28

1 Loop/Line count, Midvale serves approximately 1,319 rural residential and 124 rural business  
2 customers in five Arizona exchanges.

3 8. MTCI is a privately-held Idaho Corporation authorized to conduct business in  
4 Arizona as a Foreign Corporation. MTCI was created to facilitate the transfer of ownership to  
5 Midvale employees.

6 **Staff's Analysis**

7 Notice

8 9. Midvale provided direct notice to all of its customers on September 30, 2011.

9 The Affiliated Interests Rules

10 10. The Public Utility Holding Companies and Affiliated Interests Rules apply to all  
11 Class A investor-owned utilities, defined as telecommunications carriers that have Arizona  
12 jurisdictional annual revenues of more than \$1 million. Based on revenues reported in the 2009  
13 Annual Report on file with the Commission, Midvale did not generate more than \$1 million of  
14 Arizona jurisdictional revenue; therefore, this Application is not subject to Arizona Administrative  
15 Code ("A.A.C.") R14-2-801 through 805 of the Public Utility Holding Companies and Affiliated  
16 Interests Rules. However, since the Applicants are requesting a transfer of assets, the transaction  
17 would be subject to the Commission's review under Arizona Revised Statutes ("A.R.S.") § 40-  
18 285.

19 Transfer of Customers and Assets

20 11. In the Application, the Applicants state that Midvale's current Arizona customers  
21 will be transferred to MTCI and the proposed transfer of customers will have no adverse impact on  
22 customers. Customers will continue to receive their existing services at the same rates, terms, and  
23 conditions as are currently being provided by Midvale and will not incur any charges as a result of  
24 the change in service provider from Midvale to MTCI. Any future changes in the rates, terms and  
25 conditions will be made consistent with Commission's requirements. The transition to MTCI will  
26 be virtually transparent to the affected customers.

27 ...

28 ...

1 Transfer of ILEC CC&N

2 12. Midvale is requesting Commission approval of the transfer of Midvale's CC&N to  
3 MTCI. Midvale will also transfer all assets it owns or controls to provide intrastate  
4 telecommunications services in Arizona to MTCI. Midvale will also transfer all customer deposits  
5 to MTCI and MTCI will assume all of Midvale's contractual obligations for intrastate  
6 telecommunications services in Arizona. MTCI has the necessary technical and financial  
7 capabilities of providing the same level of service as Midvale. Additionally, Midvale provided  
8 direct notice of the transfer to all of its customers in Arizona.

9 13. The new company, MTCI, will be composed of the same company officers,  
10 management, and employees, services, rates and charges as Midvale. Therefore, Staff  
11 recommends the Commission grant the Applicants request for a transfer of Midvale's CC&N to  
12 MTCI, subject to certain conditions.

13 Request for Waiver of Slamming Rules

14 14. The Applicants requested a waiver of A.A.C. R.14-2-1904 et seq., the Commission's  
15 Slamming Rules (Article 19 -- Consumer Protections for Unauthorized Carrier Changes). At least  
16 30 days prior to the anticipated closing date and transfer of customers, Midvale and MTCI will  
17 provide notice to the Midvale customers describing the transfer of Midvale's customers to MTCI  
18 and assuring customers that they will continue to receive the same telecommunications services  
19 that they are currently receiving in accordance with the rates, terms, and conditions of their  
20 existing contracts or effective tariffs. The Applicants state that such a waiver is appropriate given  
21 that the exact same rates, terms, and conditions of service will be provided to customers after the  
22 transfer is completed.

23 ILEC Obligations

24 Eligible Telecommunications Carrier ("ETC")

25 15. Midvale is currently designated as an ETC within its current service area and as  
26 such, is a recipient of federal high-cost funds and reimbursement for the low-income programs  
27 Lifeline and Link Up that provide discounts to eligible subscribers from the Federal Universal  
28 High Cost Fund ("FUSF"). As part of MTCI assuming all of Midvale's ILEC responsibilities and

1 obligations, the Applicants indicated<sup>1</sup> that they are also requesting that Midvale's ETC designation  
2 be transferred to MTCI.

3 16. Below is a summary of Staff's review of MTCI's ETC information:

4 The requirements for a designation as an ETC are set forth in 47 U.S.C. § 214(e)(1):

5 A common carrier designated as an eligible telecommunications carrier  
6 under paragraph (2) or (3) shall be eligible to receive universal service  
7 support in accordance with section 254 and shall throughout the service area  
8 for which the designation is received – (A) offer the services supported by  
9 Federal universal service support mechanisms under section 254(c), either  
10 using its own facilities and resale of another carrier's service (including the  
11 services offered by another eligible telecommunications carrier); and (B)  
12 advertise the availability of such services and the charges using media of  
13 general distribution.

14 17. In response to Staff's data requests,<sup>2</sup> MTCI affirmed that it would provide each of  
15 the services required by the Federal universal support mechanisms under 47 C.F.R. § 54.101(a),  
16 which includes the following:

- 17 a. Voice grade access to the public switched network.
- 18 b. Local usage.
- 19 c. Dual tone, multi-frequency signaling or its functional equivalent.
- 20 d. Single party service or its functional equivalent.
- 21 e. Access to emergency services.
- 22 f. Access to operator services.
- 23 g. Access to interexchange service.
- 24 h. Access to directory service.
- 25 i. Toll limitation for qualifying low-income consumers.

26 18. MTCI has committed that it will advertise the availability of such services and  
27 charges using media of general distribution. In addition, MTCI states its will comply with the  
28 requirements specified in Commission Decision No. 67941.

<sup>1</sup> Response to Staff Data Request STF 1.7.

<sup>2</sup> Staff Data Requests STF 4.1-4.12.

1           19. An ETC carrier must also offer Lifeline and Link Up Service to all qualifying low-  
2 income consumers within its service area, pursuant to 47 C.F.R. §§ 54.405 and 54.411(a). MTCI  
3 has committed to provide Lifeline and Link Up Services to all qualifying low income consumers  
4 within Midvale's current service area and will offer services at the rates contained in the existing  
5 Midvale tariff.

6           20. Since the Commission has previously accepted the definition of the Midvale service  
7 areas as rural and eligible for FUSF,<sup>3</sup> Staff believes that MTCI meets the requirements to be  
8 designated an ETC.

9           Other

10          21. In order to protect the ratepayers, Staff recommends that MTCI not be allowed to  
11 recover, or seek to recover through rates paid by Arizona end-user retail customers, any increased  
12 costs that may result from this transaction and that MTCI bear all the transaction expenses  
13 associated with this application and MTCI not be allow to recover, or seek to recover through rates  
14 paid by Arizona end-user retail customers, any transactions expenses associated with this  
15 transaction.

16          **Staff Recommendations**

17          22. Staff recommends that the Application for the transfer of the facilities-based ILEC  
18 CC&N from Midvale to MTCI, the transfer of assets, local exchange customers and ETC  
19 designation from Midvale to MTCI, and the granting of a limited waiver of the Commission's  
20 Slanming rules be approved. Staff further recommends that approval be conditioned on the  
21 following:

- 22           a. MTCI shall not recover, or seek to recover through rates paid by Arizona end-user  
23           retail customers, any increased costs that may result from this transaction;  
24           b. No acquisition premium shall be recovered by MTCI in any future rate proceeding;  
25           c. Any negative tax consequences arising from this transaction shall be borne by the  
26           direct and indirect shareholders of MTCI;  
27           d. MTCI shall be required to file a conforming tariff within 60 days of the effective  
28           date of a Decision in this matter. Until such time, the current Midvale tariff shall be  
            presumed to be the effective tariff;

<sup>3</sup> Decision No. 60554, December 18, 1997

- e. MTCI shall be required to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service and shall modify its tariffs to conform to these rules if it is determined that there is a conflict between MTCI's tariffs and the Commission's rules;
- f. MTCI shall be required to maintain its accounts and records as required by the Commission;
- g. MTCI shall be required to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- h. MTCI shall be required to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- i. MTCI shall be required to cooperate with Commission investigations including, but not limited to customer complaints;
- j. MTCI shall be required to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
- k. MTCI shall be required to notify the Commission immediately upon changes to the Applicant's name address or telephone number; and
- l. MTCI shall be required to immediately certify to the Commission that it does not block access to alternative telecommunications providers by its customers via 101XXXX dialing.

#### CONCLUSIONS OF LAW

1. Midvale is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

2. The Commission has jurisdiction over Midvale and the subject matter of this filing under A.R.S. §40-285.

3. The Commission, having reviewed the filing and Staff's Memorandum dated November 30, 2011, concludes that it is in the public interest to grant the Application of Midvale Telephone Exchange, Inc. and Midvale Telephone Company, Inc. in connection with a proposed transaction whereby Midvale will transfer the its assets, liabilities, customers, CC&N and ETC designation to MCTI.

#### ORDER

IT IS THEREFORE ORDERED that the Application of Midvale Telephone Exchange, Inc. and Midvale Telephone Company, Inc. in connection with a proposed transaction whereby Midvale Telephone Exchange, Inc. will transfer the assets, liabilities and customers to Midvale Telephone Company, Inc. and hereby is approved, as discussed herein.

1 IT IS FURTHER ORDERED that the Application of Midvale Telephone Exchange Inc. to  
 2 transfer its Certificate of Convenience and Necessity for facilities-based local exchange  
 3 telecommunications services and ETC designation to Midvale Telephone Company, Inc. be and  
 4 hereby is approved subject to the provisions contained herein.

5 IT IS FURTHER ORDERED that the Midvale Telephone Exchange, Inc. and Midvale  
 6 Telephone Company, Inc.'s request for a waiver of the Commission's Slamming Rules be and  
 7 hereby is approved with respect to the current Application for approval of the transfer of customers  
 8 between Midvale Telephone Exchange, Inc. and Midvale Telephone Company, Inc.

9 IT IS FURTHER ORDERED that approval of the Joint Application is conditioned upon the  
 10 following:

- 11 a. Midvale Telephone Company, Inc. shall not recover, or seek to recover through
- 12 rates paid by Arizona end-user retail customers, any increased costs that may result
- 13 from this transaction;
- 14 b. No acquisition premium shall be recovered by Midvale Telephone Company, Inc.
- 15 in any future rate proceeding;
- 16 c. Any negative tax consequences arising from this transaction shall be borne by the
- 17 direct and indirect shareholders of Midvale Telephone Company, Inc.;
- 18 d. Midvale Telephone Company, Inc. shall be required to file a conforming tariff
- 19 within 60 days of the effective date of a Decision in this matter. Until such time,
- 20 the current Midvale tariff shall be presumed to be the effective tariff;
- 21 e. Midvale Telephone Company, Inc. shall be required to comply with all
- 22 Commission rules, orders, and other requirements relevant to the provision of
- 23 intrastate telecommunications service and shall modify its tariffs to conform to
- 24 these rules if it is determined that there is a conflict between Midvale Telephone
- 25 Company, Inc.'s tariffs and the Commission's rules.;
- 26 f. Midvale Telephone Company, Inc. shall be required to maintain its accounts and
- 27 records as required by the Commission;
- 28 g. Midvale Telephone Company, Inc. shall be required to file with the Commission all
- financial and other reports that the Commission may require, and in a form and at
- such times as the Commission may designate;
- h. Midvale Telephone Company, Inc. shall be required to maintain on file with the
- Commission all current tariffs and rates, and any service standards that the
- Commission may require;

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- i. Midvale Telephone Company, Inc. shall be required to cooperate with Commission investigations including, but not limited to customer complaints;
- j. Midvale Telephone Company, Inc. shall be required to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
- k. Midvale Telephone Company, Inc. shall be required to notify the Commission immediately upon changes to the Applicant's name address or telephone number; and
- l. Midvale Telephone Company, Inc. shall be required to immediately certify to the Commission that it does not block access to alternative telecommunications providers by its customers via 101XXXX dialing.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

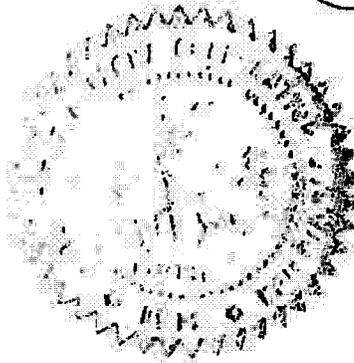
*Gary A. Stein*  
CHAIRMAN

*Paul J. ...*  
COMMISSIONER

*David ...*  
COMMISSIONER

*Paul ...*  
COMMISSIONER

*Barbara ...*  
COMMISSIONER



IN WITNESS WHEREOF, I ERNEST G JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 16th day of JANUARY, 2012.

*E G Johnson*  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:LIM/GWB:kdb/RRM

1 SERVICE LIST FOR: MIDVALE TELEPHONE EXCHANGE, INC. AND MIDVALE  
2 TELEPHONE COMPANY, INC.  
3 DOCKET NOS. T-02532A-10-0207 AND T-20741A-10-0207  
4

5 Gary H. Horton, Esq.  
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10 Steven M. Olea  
11 Director, Utilities Division  
12 Arizona Corporation Commission  
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17 Chief Counsel, Legal Division  
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19 1200 West Washington Street  
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United States Department of Agriculture  
Rural Development



Mr. Steve Child, CEO  
Midvale Telephone Exchange, Incorporated  
P. O. Box 7  
Midvale, Idaho 83645-0007

Dear Mr. Child:

In our correspondence dated December 1, 2010, preliminary approval was granted for the transfer by Midvale Telephone Exchange, Incorporated (Idaho 514 and Idaho 1105) of all its operating assets and liabilities to a newly formed subsidiary, Midvale Telephone Company (Idaho 518 and Idaho 1107). Please be advised that with this letter, final approval is given. This approval is contingent on the execution of the transfer documents to be prepared by your attorney Cindy Melillo in the form previously reviewed by RUS.

Sincerely,

DAVID J. VILANO  
Assistant Administrator  
Telecommunications Program

CC: Cynthia Melillo

1400 Independence Ave. S.W. Washington DC 20250-0700  
Web: <http://www.rurdev.usda.gov>

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