

**ORIGINAL**

**NEW APPLICATION**



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ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission

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Attorney for Midvale Telephone Exchange, Inc.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

- 10 KRISTIN K. MAYES – CHAIRPERSON
- 11 PAUL NEWMAN – COMMISSIONER
- 12 GARY PIERCE – COMMISSIONER
- 13 SANDRA D. KENNEDY – COMMISSIONER
- 14 BOB STUMP - COMMISSIONER

13 **IN THE MATTER OF MIDVALE**  
 14 **TELEPHONE COMPANY INC.'S**  
 15 **APPLICATION FOR A CERTIFICATE OF**  
 16 **CONVENIENCE AND NECESSITY and**  
 17 **MIDVALE TELEPHONE EXCHANGE**  
 18 **INC.'S APPLICATION FOR ARS 40-285**  
 19 **TRANSFER OF ASSETS and**  
 20 **APPLICATION FOR WAIVER OF**  
 21 **SLAMMING RULES**

DOCKET NUMBER: T-20741A-10-0207  
T-02532A-10-0207

**APPLICATION**

20 Midvale Telephone Exchange, Inc. (hereinafter "Midvale"), and Midvale Telephone  
21 Company, Inc. (hereinafter "MTC") through counsel, hereby provide the following information  
22 in support of Midvale/MTC's Application for transfer of Midvale's Certificate of Convenience  
23 and Necessity ("CC&N") to MTC, Midvale's Application for authority to transfer its assets to  
24 MTC, and MTE's Application for a waiver of slamming rules in its transfer of customers to  
25 MTC.

1  
2 **I. INTRODUCTION**

3 Midvale is an Idaho Corporation authorized to conduct business in Arizona as a Foreign  
4 Corporation. MTC is an Idaho Corporation authorized to conduct business in Arizona as a  
5 Foreign Corporation. Midvale holds a CC&N issued by the Commission to provide facilities-  
6 based local exchange services in Arizona.

7 Midvale's principal office is in Midvale, Idaho. All of Midvale's issued and outstanding  
8 shares of stock are owned by Lane Williams and the Estate of Shirley Archer. Each owns fifty  
9 percent (50%) of the total shares. Midvale has devised a plan that accomplishes Midvale's and  
10 Mr. Williams's goals of ensuring Midvale's continuing existence, while having little or no  
11 impact on customers, services, and employees. Midvale, its Board of Directors, and Mr.  
12 Williams have determined the best way to accomplish these goals is to transfer Midvale  
13 ownership to its employees through an Employee Stock Ownership Program.

14 MTC's principal office is also in Midvale, Idaho. MTC was created to facilitate the  
15 transfer of ownership to Midvale employees. Upon receipt of the approvals sought herein, all of  
16 MTC's issued and outstanding shares of stock will be held by Midvale.

17 Midvale proposes the following structure to facilitate transfer of ownership to its  
18 employees and to satisfy the requirements of its lenders and regulators. Effective as of  
19 December 22, 2008, Midvale adopted an ESOP plan and trust. MTC was incorporated in Idaho  
20 effective August 27, 2009, and authorized to transact business in Arizona on November 19,  
21 2009. Upon obtaining Commission approval, Midvale would transfer to MTC all of Midvale's  
22 assets, liabilities, public licenses, and the CC&N. Following the transfer of all Midvale assets  
23 and liabilities to MTC, the ESOP would acquire a portion of the Midvale stock held by Mr.  
24 Williams and the Archer Estate. Midvale would redeem the remainder of the Williams and  
25 Archer Estate shares by delivery to Mr. Williams and the Archer Estate of a promissory note for

1 the full value of their remaining Midvale shares (the "Redemption Notes"). The Redemption  
2 Notes would be secured only by the shares purchased thereby.

3       Upon the Commission's issuance of the orders requested herein, MTC will adopt the  
4 ESOP plan and trust and contribute funds to the ESOP annually as a retirement fund contribution  
5 for its employees. The contribution amount will depend on various factors, including MTC's  
6 financial health and any restrictions that may be placed on MTC by its lenders. The ESOP  
7 would use MTC's annual contributions to purchase from Midvale the balance of its authorized  
8 and unissued shares. Ultimately, the ESOP, in trust for all of the MTC employees, would own  
9 all of the issued and outstanding Midvale shares and Midvale would own all the issued and  
10 outstanding MTC shares.

11       Upon completion of the transactions, Midvale customers will be serviced by MTC. As  
12 described above for all intents purposes the customers will receive the same service, from the  
13 same company, at the same rates. In other words, there will be no change to the customers'  
14 service which should require the customer's written authorization under AAC R14-2-1901 *et*  
15 *seq.* (the "Slamming Rules").

16       Due to the contemplated transactions described above, Midvale and MTC respectfully  
17 requests the Commission issue the following orders: 1) an order authorizing the transfer of all  
18 Midvale assets and liabilities to MTC to include the transfer of Midvale's CC&N; 2) the  
19 acquisition by the ESOP of Midvale's unissued stock and; 3) an order waiving Midvale and  
20 MTC's compliance with R14-2-1901 *et seq.*

21 **II. THE APPLICANT**

22       According to its March 31, 2010 Loop/ Line count, Midvale serves approximately 1319  
23 rural residential and 124 rural business customers in five Arizona exchanges. Midvale serves a  
24 total of 2,380 rural customers in Idaho, Oregon, and Arizona. The Commission has received only  
25 7 Midvale customer complaints in the last 14 years.

1 Copies of Midvale's Certificate of Incorporation and Articles of Incorporation are  
2 attached hereto as Attachment "A". The applicant's exact name and the address of its principle  
3 business office are:

4 Midvale Telephone Exchange, Inc.,  
5 P.O. Box 7  
6 2205 Keithley Creek Road  
7 Midvale, Idaho, 83645

7 **III. DESIGNATED CONTACT**

8 The name and address of the person authorized, on behalf of the applicant, to receive notices  
9 and communications regarding this application is:

10 Gary H. Horton, Esq.  
11 PMB 447  
12 989 S. Main St., Suite A  
13 Cottonwood, Arizona, 86326  
14 Telephone: 928-649-9413  
15 Email: [ghorton\\_57@msn.com](mailto:ghorton_57@msn.com)

14 **IV. REQUEST FOR ORDER AUTHORIZING TRANSFER OF ASSETS AND**  
15 **LIABILITIES TO INCLUDE THE CERTIFICATE OF CONVENIENCE AND**  
16 **NECESSITY FROM MIDVALE TELEPHONE EXCHANGE TO MIDVALE**  
17 **TELEPHONE COMPANY**

18 The Commission has the authority under A.R.S. §40-285 to issue an order authorizing the  
19 transfer of all Midvale assets and liabilities, including the Certificate of Convenience and  
20 Necessity to MTC.

21 The transaction would transfer all of Midvale's assets and liabilities to MTC in a tax-free  
22 Section 351 capitalization in exchange for all of the issued and outstanding shares of MTC stock.  
23 As a result, Midvale's existing employees will become employees of MTC, and Midvale's  
24 customers will become customers of MTC. When the transaction is complete, Midvale's only  
25 asset will be 100% ownership interest in MTC and no liabilities other than obligation for  
payments due under the Redemption Notes. MTC will own and operate all of the operating  
assets to provide service to Midvale's customers and with Commission approval will hold the

1 Certificate of Convenience and Necessity. MTC will also be the holder of all debt currently held  
2 by Midvale with the Rural Utilities Service and the Rural Telephone Finance Cooperative. MTC  
3 would not incur any additional debt as a result of the transaction.

4 **V. REQUEST FOR AN ORDER APPROVING MTC'S CONTRIBUTIONS TO THE**  
5 **ESOP AND THE ESOP'S ACQUISITION OF MIDVALE STOCK**

6 Upon issuance of the Commission order, MTC would adopt the ESOP plan and trust  
7 already adopted by Midvale. MTC would contribute funds to the ESOP on an annual basis as a  
8 retirement fund contribution for its employees. Subject to the factors discussed previously,  
9 MTC's intent is to contribute approximately \$400,000 per year to the ESOP. The ESOP will use  
10 these contributions to purchase Midvale's remaining authorized but unissued shares. The first  
11 contribution [which already has been paid by Midvale but held in trust by the ESOP pending  
12 approvals] will be used by the ESOP to purchase Midvale stock directly from Williams and the  
13 Archer estate on a pro rata basis.

14 **VI. REQUEST FOR AN ORDER TRANSFERRING MIDVALE'S CERTIFICATE OF**  
15 **CONVENIENCE AND NECESSITY TO MTC**

16 When the transaction is complete, Midvale will no longer own any operating assets  
17 providing telecommunication services in Arizona. MTC will own these assets and provide all  
18 telecommunication services currently provided by Midvale. It is appropriate that the  
19 Commission authorize Midvale to transfer its CC&N to MTC, and that the Commission regulate  
20 MTC.

21 **VII. IMPACT ON MIDVALE CUSTOMERS**

22 The transactions will be implemented so there is no, or very minimal, effect on current  
23 Midvale customers. Customers will continue to receive the same services and the same rates as  
24 currently authorized by the Commission. There will be no interruption in services or change in  
25 billing or customer service practices. The MTC employees providing the services will be the

1 same as prior to the transaction, and MTC management will be the same as the current Midvale  
2 management. MTC will not immediately take on any liabilities not currently held by Midvale.

3 The ultimate transfer of ownership of Midvale stock to Midvale's/MTC's employees  
4 through an ESOP provides a favorable purchase and sale structure to Mr. Williams and the  
5 Archer estate, while having no impact to the bottom line of Midvale or MTC.

6 The ESOP structure proposed by Midvale offers substantial tax advantages over an  
7 outright purchase by Midvale's employees or an outright purchase by any unrelated third party  
8 purchasers. Following the implementation of the ESOP structure proposed neither Midvale nor  
9 MTC will pay federal or state income taxes. This means that Midvale and/or MTC will only  
10 have to earn \$1.00 to pay each principal dollar of the purchase price. All other structures  
11 considered would result in the purchaser needing to earn on a pre-tax basis between \$1.51 and  
12 \$1.70 to pay each dollar of the principal portion of the purchase price. The proposed structure  
13 will promote a stable rate structure for Midvale and MTC customers. The proposed structure  
14 also will promote business stability by transferring business ownership to Midvale's current  
15 employees.

16 Midvale's redemption of its shares held by Mr. Williams and the Archer estate will have  
17 minimal, if any, impact on Midvale customers. When the shares are redeemed, Midvale no  
18 longer will hold the operating assets or provide any services to the customers, so the debt  
19 liability owed by Midvale to Mr. Williams and the Archer estate will not affect the rates charged  
20 to customers, nor affect the assets used to deliver the service to the customer. Because the  
21 Redemption Notes would be secured only by the redeemed shares, if Midvale fails to pay its  
22 payment obligations under the Redemption Notes, Mr. Williams and the Archer estate simply  
23 will regain ownership of the shares.

24 The annual contributions by MTC to the ESOP will have minimal, if any, impact on the  
25 customer. The proposed structure is clearly beneficial to Midvale/MTC from a financial point of

1 view. The tax advantages of the structure will minimize or eliminate the need to raise rates to  
2 generate income to pay the transaction purchase price.

3 The only potential disadvantage to Midvale/MTC is the admitted complexity of the ESOP  
4 structure itself. Midvale has employed professionals with ESOP experience to help it in  
5 identifying and minimizing these complexities.

6 **VIII. REQUEST FOR WAIVER OF SLAMMING RULES**

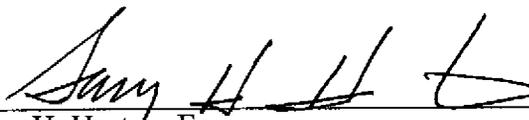
7 The purpose of Arizona's Slamming Rules is to ensure that Arizona customers are  
8 protected from unauthorized changes to their telecommunications carrier. See AAC R14-2-  
9 1902. Here, there will be no change in the customers' service, rates, or the employees and  
10 managers providing the service. Therefore, Midvale/MTC respectfully requests that the  
11 Commission waive its compliance with AAC R14-2-1901 *et seq* when customers are transferred  
12 from Midvale to MTC.

13 **IX. REQUEST FOR APPROVAL WITHOUT A HEARING**

14 Midvale requests that the Commission issue the requested orders without first holding a  
15 hearing. While not specifically applicable to Midvale/MTC as they are not Class A utilities, the  
16 Affiliated Interest Rules are instructive as to the Commission's authorization to approve the  
17 requested transactions without holding a hearing. AAC R14-2-802 allows the Commission to  
18 determine whether to hold a hearing on the matter of organization or reorganization of a public  
19 utility holding company or to approve the organization or reorganization without a hearing. See  
20 AAC R14-2-802.B.

21 Here, the public interest does not require a hearing to consider the issues presented.  
22 Midvale is essentially seeking approval for a change of ownership that will not affect the manner  
23 in which it provides services or the scope of its services. Midvale's customers will not be  
24 negatively impacted by the proposed transactions, nor will any other service provider.

1 RESPECTFULLY REQUESTED this 18<sup>th</sup> day of May, 2010.

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4 

5 Gary H. Horton, Esq.  
6 Attorney for Midvale Telephone Exchange, Inc.

7 Original and 14 copies of the foregoing  
8 mailed this 18 day of May, 2010 to:

9 Docket Control  
10 Arizona Corporation Commission  
11 1200 West Washington St.  
12 Phoenix, Arizona 85007-2996

13 Copies of the foregoing mailed this  
14 18 day of May, 2010 to:

15 Lynn Farmer, Esq.  
16 Chief Administrative Law Judge  
17 Hearing Division  
18 Arizona Corporation Commission  
19 1200 West Washington St.  
20 Phoenix, Arizona 85007-2996

21 Janice Alward, Esq.  
22 Chief Counsel, Legal Division  
23 Arizona Corporation Commission  
24 1200 West Washington St.  
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26 Steven Olea, Esq.  
27 Director, Utilities Division  
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31 By: 