

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CASE TYPE: CIVIL

Court File No. 62 CV 11-5203

**AFFIDAVIT OF BRENT J.  
CHRISTENSEN IN SUPPORT OF  
MTA'S PETITION FOR  
CLARIFICATION**

STATE OF MINNESOTA     )  
  )  
COUNTY OF HENNEPIN     )

Brent J. Christensen, being duly sworn, on oath says:

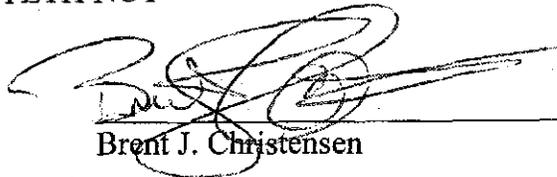
1. My name is Brent J. Christensen. I am President and CEO of the Minnesota Telecom Alliance ("MTA").
2. MTA represents over 80 local exchange telephone companies that provide telecommunications services, including internet services, to the local communities that they serve.
3. From 2001 to 2010 I served as Vice President/General Manager of Christensen Communications Company which owns and operates the Madelia Telephone Company. As part of those duties I over saw the company's construction projects. This included obtaining permits from three different counties, MNDOT, and the DNR. I worked with our employees, construction contractors, and engineers to bury fiber and copper in rural areas surrounding Madelia and in the town of St. James. Prior to that position, I worked to physically install both fiber and copper in our Madelia exchange.
4. Many MTA members continue to build and upgrade their networks to include new or additional fiber optic and other facilities to enhance high-speed broadband services to their communities, which include rural communities throughout rural Minnesota that may not currently have

access to a high-speed broadband network.

5. MTA members that had already received the state permits needed for installation of fiber optic cables or other related facilities within state highway rights of way were among those who received a memorandum from the Minnesota Department of Transportation (“MNDOT”), dated June 9, 2011 (Exhibit 1, Memorandum).
6. This memo lacks clarity as to which entities are directed to cease work. While broadly addressed to “Permittees and Agreement Holders”, the memo narrows its application by indicating that it is in regard to: “Potential Temporary Suspension of State Contract Performance.” The Memo then describes the situation where by the Agency is without an appropriation and without funds it “will have no or very limited authority to expend or release funds to pay for goods or services.” The Memo further advises MNDOT “contractors, vendors, and grantees” that all work must be suspended pending an authorized appropriation.
7. The MTA member companies seeking this clarification are not parties to a State Contract. Nor are the MTA member companies providing or seeking goods or services from MNDOT. MTA member companies are also not MNDOT “contractors, vendors or grantees.” They are merely permittees exercising their right under state law to locate telecommunications facilities with in state highway right of way pursuant to a valid permit.
8. As the former General Manager of the Madelia Telephone Company, I am familiar with and have obtained MNDOT permits similar to Exhibit. 2, the permit issued to Paul Bunyan Telephone Company. This permit, like many similar permits issued to Madelia Telephone Company does not call for, require or anticipate the contemporaneous MNDOT supervision or inspection of the work to be performed under the permit. Indeed, while the permit clearly allows for MNDOT inspection and oversight, from my experience generally MNDOT staff inspects these types of projects after completion. If any corrections or changes are necessary upon inspection, the telephone company is directed to make the required changes. In the unlikely event that the telephone company does not perform the requested corrective action, a performance bond is also required to guarantee corrective action is completed at no cost to the State or MNDOT.
9. In my years working as General Manager of Madelia Telephone Company, I do not ever recall a situation where a MNDOT employee or agent inspected or supervised the contemporaneous installation of facilities by Madelia pursuant to a MNDOT permit

10. Many MTA members are currently completing or in the process of completing fiber optics buildouts face the pressure of a limited construction season in Minnesota. Any unnecessary or extended halt on construction in areas that require a MNDOT permit may threaten the vitality of the project.
11. Further, some MTA members received grants and loans from the American Recovery and Reinvestment Act of 2009 ("ARRA") for the purpose of deploying broadband facilities. The terms of these grant and loan agreements require that the projects must be substantially complete within two years of the award. Any extended halt on construction of these projects in areas that require a MNDOT permit threatens the awardee's ability to meet its requirements under its ARRA broadband grant or loan and, as a result, could cause these awards to leave the state and be awarded elsewhere.
12. Allowing MTA member companies, such as Paul Bunyan, to continue their planned construction work under their already-secured MNDOT permits during the pendency of the state government shut-down, when the MNDOT permit does not require any further state involvement, is necessary to allow the companies to complete their construction within the construction season, as well as meet their obligations under federal grant and loan agreements.

FURTHER YOUR AFFIANT SAYETH NOT

  
Brent J. Christensen

Subscribed and sworn to before me  
this [7] day of July, 2011.

  
Notary Public

