

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

CT05-004

APR 14 2005

Date Docketed APR 14 2005 300 East Capitol Building, Pierre SD 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

COMPLAINT

Complainant(s) (Person(s) filing the complaint)		Respondent(s) (Person(s) or Company complained against) At a minimum, the name of the company	
Name	Eldon Lindquist Pierre Radio Paging & Telephone	Utility Company	Venture Comm./Sully Buttes
Address	PO Box 99	Contact Person	Randy Houdek
City, State, Zip	Pierre, SD 57501-0099	Address	PO Box 157
Work Phone	605-224-2848	City, State, Zip	Highmore, SD 57345-0157
Home Phone	605-224-2211	Phone	605-852-2224
Cellular Phone	605-280-7717	Fax	

If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below: (If Complainant is not represented by an attorney, please leave blank:

Thomas Maher 201 N. Euclid Ave., Pierre, SD 57501 605-224-0491 605-224-0493 Fax

These are the facts giving rise to my complaint:

See exhibit 1 and attachments.

Please complete the reverse side of this document

NOTE: Please attach additional pages, if necessary, to explain your situation. Also enclose copies of any bills or other

RESOLUTION REQUEST

I ask that the Public Utilities Commission grant the following remedy. (What do you think the Commission should do to solve your complaint? Be specific in your request for a resolution.)

See exhibit 1 and attachments.

NOTE: Please attach any additional pages if necessary.

AFFIRMATION STATEMENT

I hereby affirm that these statements are true and accurate to the best of my knowledge.

Galvin Dendy 4-14-05
Complainant's Signature(s) Date

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon	
<u><i>Barber Houder, Venture Communications</i></u>	

by	<u>605-852-2404</u>
at	<u><i>Sara Greff</i></u>
on	<u>4/14/05</u>
at	<u>2:15 p.m.</u>

SULLY BUTTES Exhibit 1

On September 15, 2000 we wrote to Sully Buttes Telephone advising them of the Federal Communications Commission (FCC) Memorandum Opinion & Order (MO&O) dated June 21, 2000.

On October 24, 2000 we received a letter from Darla Pollman Rogers that the letter was received on October 12, 2000 even though it was sent certified mail on the 15th of September stating that she would look into the matter.

On December 20, 2000 a second request was sent concerning the timeliness of a response.

On the 27th of December we received a response stating that the FCC's decision in the TSR Wireless case does not apply, and that Sully Buttes is in compliance with the FCC's rules.

On March 12, 2001 a letter was sent by our counsel Michael Higgs detailing where their position was wrong and again asked to settle the matter. This letter was totally ignored.

Another letter was written on March 2, 2004 also totally ignored.

In December 2004 I contacted the PUC to seek assistance to settle this matter. My position is that the PUC does have jurisdiction because this is a consumer billing dispute. Agreed the PUC does not have jurisdiction on FCC matters, Sully Buttes does have an obligation to comply with FCC rules and regulations.

We received a letter from Darla Pollman Rogers written December 22, 2004 wanting to resolve the claim. In their offer to settle they claim there are 3 trunk lines. Instead of 3 trunk lines it should be 5 lines. Based on these changes it should be $(\$70.00 \times 5 \text{ trunks} \times 60 \text{ months} \times 40\%)$ for a total of \$8400.00 plus interest.

I ask for help from the PUC to bring this matter to conclusion:

1. Determine if Sully Buttes attempted to resolve this matter in a manner that complies with PUC policies & directives.
2. Review billing overcharges and determine a fair settlement.

PIERRE RADIO PAGING & TELEPHONE INC.

1520 NORTH GARFIELD
P.O. BOX 99
PIERRE, SD 57501
(605) 224-2848

September 15, 2000

Mr. Randy Houdek
Sully Buttes Telephone Cooperative Inc.
Venture Communications Inc.
P.O. Box 157
Highmore, SD 57345-0157
605-852-2224

Re: Pierre Radio Paging & Telephone Inc., Pierre, South Dakota

Dear Randy,

On June 21, 2000 the Federal Communications Commission ("FCC") issued a *Memorandum Opinion and Order* ("MO&O") in *TSR Wireless, LLC, et al. v. US West Communications, Inc., et al.* ("TSR"), regarding interconnection with one-way paging providers. This FCC order addressed several long standing issues pertaining to LEC-paging provider interconnection. Specifically, the FCC ordered and affirmed that:

- LEC's may not impose charges for facilities used to deliver LEC-originated traffic to paging carriers.
- LEC's must cease charging for those facilities used by the LEC to deliver LEC originated call traffic to a paging carrier, effective since November 1996.
- Paging carriers are entitled to the benefits of the FCC's rule 51.703(b) without requiring a Section 251/252 interconnection agreement.
- LEC's cannot impose non-cost-based charges on paging carriers solely for the use of numbers used in Type 1 interconnection.
- Paging carriers, using either Type 1 or Type 2 connections, "transport" and "switch" call traffic within the meaning of the Commissions rules.

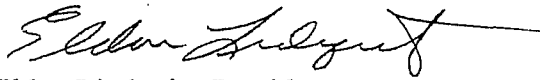
In addition, we believe any attempt by SBTC/VCI to collect compensation for trunk facilities used to deliver non-SBTC/VCI originated sent paid call traffic is also unlawful. Note that sent paid call traffic is the responsibility of the originating carrier, not the terminating carrier. Any charges, levied by transit and terminating carriers for the transport, switching and termination of sent paid call traffic, are the responsibility of the originating carrier or the Interexchange carrier as appropriate. As the terminating carrier, Pierre Radio Paging and Telephone is certainly not responsible for any charges for facilities used by SBTC/VCI to deliver third party originated, sent paid call traffic. In fact, since SBTC/VCI is being compensated by the originating carriers through transit charges, access charges or other compensation arrangements, any charges paid by Pierre

Radio Paging and Telephone for the facilities used in the delivery of such call traffic would be a double recovery by SBTC/VCI, of the costs of such facilities.

In summary, we reiterate our demand that SBTC/VCI immediately cease billing unlawful charges for SBTC/VCI trunk facilities used by SBTC/VCI to deliver call traffic to Pierre Radio Paging and Telephone and immediately credit or refund past SBTC/VCI charges for these facilities back to November 1996. We also request that SBTC/VCI comply with FCC and Court orders pertaining to the interconnection of carriers in the absence of 252/252 interconnection agreements.

Thank you for your cooperation and assistance.

Sincerely,



Eldon Lindquist, President
Pierre Radio Paging & Telephone, Inc.

Cc:

Vic Jackson
Vic Jackson Interconnection Services
2377 Seminole Dr.
Okemos, MI 48864

Meyer & Rogers

—ATTORNEYS AT LAW—

P.O. BOX 1117 • 320 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-1117 • TELEPHONE 605-224-7889 • FACSIMILE 605-224-9060

BRIAN B. MEYER
DARLA POLLMAN ROGERS

October 24, 2000

Eldon Lindquist, President
PIERRE RADIO PAGING & TELEPHONE
P. O. Box 99
Pierre, South Dakota 57501

Dear Mr. Lindquist:

Please be advised that I represent Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc. (SBTC/VCI) of Highmore, South Dakota. Randy Houdek received your letter of October 12, 2000, and referred the same to me.

SBTC/VCI will respond to the demands made in your letter after I have had a chance to research the various points you make.

Sincerely yours,

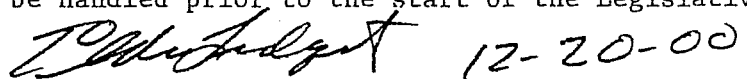


Darla Pollman Rogers
Attorney at Law

DPR/ph

CC: Randy Houdek

I am concerned with the timeliness of the response of this matter. Is there any chance this could be handled prior to the start of the Legislative Session?



CC: Randy Houdek

Meyer & Rogers

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BRIAN B. MEYER
DARLA POLLMAN ROGERS

December 27, 2000

Eldon Lindquist, President
PIERRE RADIO PAGING & TELEPHONE
P. O. Box 99
Pierre, South Dakota 57501

Dear Mr. Lindquist:

This letter is in response to your letter dated September 15, 2000, concerning the interconnection facilities provided by Sully Buttes Telephone Cooperative, Inc. (Sully Buttes) to Pierre Radio Paging & Telephone, Inc. (PRPT). In your letter, you allege that Sully Buttes is billing unlawful charges for trunk facilities used by Sully Buttes to deliver call traffic to PRPT. You ask that Sully Buttes credit or refund past charges for these facilities back to November of 1996. You cite the FCC's recent decision in TSR Wireless, LLC et al. v. U S West Communications, Inc., et al. (TSR Wireless), in which the FCC found that LECs may not impose charges for facilities used to deliver LEC-originated traffic to paging carriers, to support your position. You also allege that any attempt by Sully Buttes to collect compensation for trunk facilities used to deliver non-Sully Buttes originated sent paid call traffic is unlawful. Finally, you ask that Sully Buttes comply with the FCC and Court orders pertaining to the interconnection of carriers if there is no interconnection agreement pursuant to Section 251/252 of the Telecommunications Act of 1996.

Our records show that Sully Buttes currently provides two-way trunking facilities to PRPT. Moreover, our records show that PRPT delivers traffic to Sully Buttes via these facilities. Accordingly, it appears that PRPT is not a one-way paging provider and, therefore, the FCC's decision in the TSR Wireless case does not apply here.

In addition, the FCC's interconnection rules allow carriers such as Sully Buttes to charge for interconnection facilities, like those provided to PRPT, that are used to deliver traffic to Sully Buttes. Although you are not entitled to free interconnection, we are willing to negotiate an arrangement for the provision of such facilities under terms that are mutually satisfactory.

Eldon Lindquist
December 27, 2000
Page 2

With respect to your allegation concerning non-Sully Buttes traffic, the FCC's rules only prohibit LECs from charging for facilities used to deliver their local call traffic. Sully Buttes, therefore, is entitled to be compensated for that portion of interconnection facilities used to deliver non-Sully Buttes local traffic to PRPT.

Finally, with respect to your request that Sully Buttes comply with the FCC and Court orders pertaining to the Interconnection of carriers if there is no Section 251/252 interconnection agreement, Sully Buttes does not charge PRPT for terminating local traffic that originates on Sully Buttes' network. Accordingly, Sully Buttes believes that it is in compliance with the FCC's rules on this issue as well.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

CC: Randy W. Houdek



Schwaninger & Associates, P.C. *Attorneys at Law*

COPY

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Robert H. Schwaninger, Jr.

Michael L. Higgs, Jr.†

Delaney M. DiStefano

Benjamin J. Aron

Richard P. Hanno †

†Admitted in Maryland

Vic Jackson

Interconnection Consultant

March 12, 2001

via Facsimile and Certified Mail

Ms. Darla Pollman Rogers

Meyer & Rogers

320 East Capitol

Pierre, South Dakota 57501-1117

Tel: (605) 224-7899

Fax: (605) 224-9060

RE: Pierre Radio Paging and Telephone
Interconnection Dispute with Sully Buttes Telephone Cooperative, Inc.

Dear Ms. Rogers:

This letter is in response to your correspondence of December 27, 2000 concerning the interconnection facilities between Sully Buttes Telephone Cooperative, Inc. (“Sully Buttes”) and Pierre Radio Paging and Telephone (“Pierre Radio”). In a September 15, 2000 letter to Sully Buttes, Pierre Radio requested that Sully Buttes cease billing for trunk facilities used to deliver call traffic to Pierre Radio and refund past charges for these facilities dating back to November 1996. Your December 27, 2000 response letter indicated that in your estimation, Pierre Radio is not a one-way paging provider and therefore, the Federal Communications Commission’s decision in *TSR Wireless, LLC et al., v. US West Communications, Inc., et al.*, (“*TSR Wireless Order*”) does not apply to this circumstance.

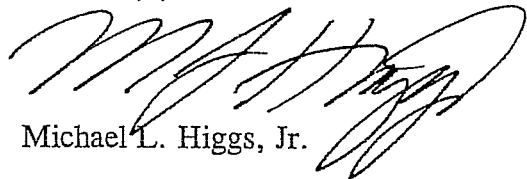
We respectfully disagree with your statements and your conclusions of law in this instance. The *TSR Wireless Order* did not specify that the Commission’s conclusions and orders applied only to one-way paging carriers. As reference to this point, and specifically with respect to facilities charges, we refer you to paragraph 29, page 18 of the *TSR Wireless Order*, which references CMRS (Commercial Mobile Radio Service) carriers and does not mention or specify paging carriers. In addition, most of the Commission’s citations to the *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98,

First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") in the *TSR Wireless Order* referred to CMRS carriers in general and not specifically paging carriers.

We herein reiterate our request to Sully Buttes to cease billing for Sully Buttes' interconnection facilities used by Sully Buttes to deliver call traffic to Pierre Radio. Your statement that Pierre Radio delivers call traffic to Sully Buttes *via* the facilities in question is correct. But, most importantly, we note that Sully Buttes also delivers call traffic to Pierre Radio over the same two-way trunk facilities. As the FCC pointed out in the *TSR Wireless Order* in paragraph 34, page 21, "[t]he *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier..." Our measurements indicate that Sully Buttes originates approximately 33 percent of the call traffic carried on the interconnection trunk facilities between Sully Buttes and Pierre Radio. We therefore request that Sully Buttes cease billing, and refund past charges made since November 1996, for that portion of the interconnection trunks used by Sully Buttes to deliver call traffic to Pierre Radio. We also note that your statement that Sully Buttes does not charge Pierre Radio for terminating local traffic that originates on Sully Buttes network is wrong. Sully Buttes does, in fact, charge for terminating local traffic when it charges Pierre Radio for the Sully Buttes interconnection facilities Sully Buttes uses to deliver call traffic to Pierre Radio.

Given the circumstances and the ongoing nature of this dispute, Pierre Radio is prepared to bring Sully Buttes' deliberate and continued violations of Commission rules to the attention of the Enforcement Bureau and to press our request for resolution of this matter at the Federal Communications Commission. This letter serves as notice of our intent to bring a Formal Complaint before the agency if the instant situation is not resolved in a timely manner. We implore Sully Buttes to reconsider its position in this situation and to respond appropriately.

Very truly yours,



Michael L. Higgs, Jr.

MLH:sdl

cc: Mr. Eldon Lindquist

Mr. Vic Jackson



Schwanger & Associates, P.C. Attorneys at Law

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Richard P. Hanno ††

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† Admitted in Maryland and DC

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††† Admitted in Indiana and DC

Vik Jackson

Interconnection Consultant

March 2, 2004

Darla Pollman Rogers, Esq.
Meyer & Rogers
P.O. Box 1117
320 East Capitol
Pierre, South Dakota 57501-1117
Tel: (605) 224-7889
Fax: (605) 224-9060

Re: Pierre Radio Paging and Telephone, Inc.
Interconnection with Sully Buttes Telephone Cooperative, Inc.

Dear Ms. Rogers:

In prior correspondence, our firm has notified your office, as counsel for Sully Buttes Telephone Cooperative, Inc. ("Sully Buttes"), that Pierre Radio Paging and Telephone, Inc. ("Pierre Radio") contests past unlawful billing for interconnection facilities between Sully Buttes and Pierre Radio. To date this issue remains unresolved. Accordingly, we are forwarding this letter to your attention in an attempt to resolve the dispute between the parties.

As Sully Buttes has not taken appropriate action in response to our prior complaints regarding its unlawful charges to Pierre Radio, we again describe why Sully Buttes' billing is inaccurate and unlawful. Sully Buttes has failed to bring its billing practices into conformance with those charges permitted by the Federal Communications Commission's ("Commission") rules. We remain confident that Sully Buttes will recognize that its billing practices are unlawful and that it will reform its practices before Pierre Radio is forced to seek a remedy from a regulatory agency vested with jurisdiction over this matter.

1. Sully Buttes' Billing is Illegal and Fraudulent.

As we have previously pointed out, Sully Buttes' bills are wholly erroneous. The charges applied to Pierre Radio's accounts by Sully Buttes are comprised of usage charges for delivery of traffic that originates on Sully Buttes' system, and is terminated upon Pierre Radio's system. Such charges are unlawful. It is possible that Sully Buttes has attempted to charge Pierre Radio for the delivery to Pierre Radio's point of interconnection of calls that originate do not originate

on Sully Buttes' network, but Sully Buttes has provided Pierre Radio with no credible proof that any such charges have been applied, and such charges would be contrary to the FCC's rules in any event. We believe Sully Buttes has also imposed late fees on Pierre Radio's accounts based on Pierre Radio's non-payment of Sully Buttes' illegal charges. Such charges are impermissible.

a. Charges For Delivery of Sully Buttes Originated Traffic Are in Contravention of the FCC's Rules and the Communications Act.

The Commission's decision in *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 F.C.C.R. 11166 (June 21, 2000) ("*TSR Order*") announced that a local exchange carrier ("LEC") cannot charge a CMRS carrier for delivery of LEC-originated intra-MTA calls to a CMRS carrier's point of interconnection. The Commission found that Section 51.703(b)¹ of the Commission's rules prevents such charges. That rule section states as follows: "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."² The plain language of Section 51.703(b)³ prohibited Sully Buttes from billing Pierre Radio for traffic originated by Sully Buttes' customers. Nevertheless, Sully Buttes has charged Pierre Radio for such traffic.

The Commission's decision in the *TSR Order* simply restated the Commission's position on this issue as such position was announced first in the *Local Competition Order*, 11 F.C.C.R. 15499, 15997 (1996) ("*Local Competition Order*"). Therein, the Commission stated as follows:

Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications." Under section 3(43), "[t]he term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251(b)(5) ... to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks⁴

The above quoted text from the *Local Competition Order* makes clear that since 1996, the Commission has prohibited LECs from charging CMRS carriers, and specifically paging carriers, for telecommunications traffic that originates on the LEC's network. The Commission's *Local Competition Order* clearly held that LECs, such as Sully Buttes,⁵ were entitled to charge only for calls that LECs terminate on their own networks. The Commission has also made clear that termination of LEC calls to a paging carrier's customer is accomplished by the paging carrier, not by the LEC. The

¹ 47 C.F.R. § 51.703(b).

² *Id.*

³ 47 C.F.R. 51.703(b).

⁴ *Local Competition Order*, 11 FCC Red at 15499, 15997 (emphasis supplied).

⁵ The Commission's rules and Orders make no exception for Competitive Local Exchange Carriers.

Commission stated as much in the *TSR Order*.⁶ Accordingly, it is clear that the Commission's rules have consistently been interpreted in such a way as to make clear that Sully Buttes would owe Pierre Radio termination fees for calls originated on Sully Buttes' network and terminated upon Pierre Radio's network.

The FCC has also made quite clear that LECs, such as Sully Buttes, were and are prohibited from charging CMRS carriers for delivery of Sully Buttes' own traffic to a CMRS carrier's point of interconnection for termination on the CMRS carrier's system from the effective date of the Local Competition Order (nearly eight years ago).⁷ The prohibition against such charges was not only effective as of the date the Local Competition Order was released in 1996, but the prohibition was immediately effective regardless of whether a LEC and a CMRS carrier entered into an interconnection agreement pursuant to section 252 of the Communications Act.⁸ The Commission stated this proposition in the *TSR Order*, where it said "Defendant's argument that the benefits of section 51.703(b) of the Commission's rules are available only through a section 252 interconnection agreement process is incorrect . . . Defendants should not have doubted their obligation to cease charging Complainants for the facilities at issue here . . ."⁹

More recent cases interpreting this issue have uniformly held that LECs are responsible for the cost of delivering their own originated traffic to a CMRS carrier for termination. The United States Court of Appeals for the 4th Circuit reached such a conclusion in *MCIMetro Access Transmission Services v. Bell South Telecommunications*, 03-1238 (4th Cir. Dec. 18, 2003). In *MCIMetro* the 4th Circuit addressed the issue of "whether BellSouth can charge MCI for the cost of transportation of local calls originating on BellSouth's network to MCI's chosen POI ["Point of Interconnection"], when that POI happens to be outside of the local calling area where the call originated." *MCIMetro* at 7. The Fourth Circuit concluded: "In sum, we are left with an unambiguous rule, the legality of which is unchallenged, that prohibits the charge that BellSouth seeks to impose. Rule 703(b)¹⁰ is unequivocal in prohibiting LEC's from levying charges for traffic originating on their own networks, and by its own terms, admits of no exceptions." *Id.* at 13 (emphasis added). The United States Court of Appeals for the Fifth Circuit reached a similar decision in *Southwestern Bell Telephone Co. v. Public Utilities Commission of Texas*, (5th Circuit Oct. 21, 2003).¹¹

In light of the foregoing, it seems abundantly clear that the charges imposed by Sully Buttes on Pierre Radio, which charges were for delivery of Sully Buttes originated traffic to Pierre Radio for termination on Pierre Radio's system were utterly impermissible. The charges were prohibited by Section 51.703(b)¹² when billed; the charges were impermissible regardless of whether an interconnection agreement had been requested or negotiated; and the charges remain impermissible to this day.

⁶ *TSR Order* at ¶ 22-23.

⁷ *Local Competition Order*, 11 FCC Rcd at 16016.

⁸ 47 U.S.C. § 252.

⁹ *TSR Order* at ¶ 29.

¹⁰ 47 C.F.R. § 51.703(b).

¹¹ See also *Mountain Communications, Inc. v. FCC*, 355 F.3d 644 (D.C. Cir. 2004) (the United States Court of Appeals for the District of Columbia Circuit reversed and remanded the only FCC decision to the contrary finding the decision was arbitrary and capricious).

¹² 47 C.F.R. § 51.703(b).

b. Sully Buttes' Charges, if any, for Delivery of Calls Originating on Other Carrier's Networks is in Contravention of Commission Rules and Undefined in the Bills.

While it is entirely unclear from Sully Buttes' bills and from its correspondence, it is possible that some portion of Sully Buttes' bill for services provided to Pierre Radio is for transit traffic – traffic that originates on another carrier's system and transits Sully Buttes' system in order to be terminated on Pierre Radio's system. Such traffic, however, cannot be billed to the terminating carrier in accord with the FCC's rules. It is a well established fact that the FCC's interconnection compensation rules "follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers." *Texcom v. Bell Atlantic*, 16 F.C.C.R. 21493, 21495 ¶ 6 (2001). The FCC's current rules allocate *all* of the cost of a call to the originating caller and/or the caller's carrier.¹³

Section 51.709(b)¹⁴ of the Commission's rules makes clear that a carrier is only responsible for that portion of an interconnection facility it uses to send traffic to an interconnecting carrier's network. Thus, if any portion of Sully Buttes' bill to Pierre Radio represents charges for transit traffic, such charges are clearly in violation of the Commission's rules and orders as transit traffic is sent to Pierre Radio. Any transit calls that Sully Buttes delivers to Pierre Radio for termination should be billed to the originating caller by Sully Buttes. See *Texcom*, 16 F.C.C.R. at 21495. Sully Buttes must acknowledge that payment of transit expenses is the duty of the calling party's network, and that Sully Buttes cannot pass this expense on to Pierre Radio.¹⁵ Accordingly, any portion of Sully Buttes' bill that consists of charges for transit traffic cannot be billed to Pierre Radio.

c. The Late Charges Assessed on Sully Buttes' Illegal Billing Are Impermissible.

As it has been clearly established above that Sully Buttes' charges against Pierre Radio's accounts were wholly impermissible, it follows as a matter of course that late charges assessed against those bills are equally invalid. Pierre Radio was at no time presented with a bill that reflected legal charges it was required to pay. To the contrary, the charges it was presented with represented usage charges that were prohibited by the Commission's rules since 1996. As Pierre Radio was being asked to pay bills that represented illegal charges, and as it had no obligation to pay such charges, any late fees that were assessed by Sully Buttes for non-payment of illegal, invalid charges are themselves invalid and illegal. While Pierre Radio is unaware of the exact amount of Sully Buttes' bill which represents late fees, it is inconsequential to Pierre Radio. Sully Buttes' entire bill, both the initial charges and the late fees, is invalid, and thus, represents no obligation on Pierre Radio.

¹³ See, FCC, NOTICE OF PROPOSED RULEMAKING; In the Matter of Developing a Unified Inter-carrier Compensation Regime CC Docket No. 01-92, Rel. April 27, 2001, Paragraphs 8 and 19, Footnotes 8, and 36.

¹⁴ 47 C.F.R. § 51.709(b).

¹⁵ The FCC's recent decision in In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Sully Buttes Virginia, Inc. and for Arbitration (02-359 December 12, 2003) makes clear that a LEC must provide calling party information for transit calls if it intends to pass the bill for such calls to the calling party. *Id.* at ¶¶ 32-42.

2. Conclusion.

As a practical issue, we have waited over a year for your reply to this request and certainly wish to settle this matter in a timely and reasonable manner. We would appreciate your response including a fair and reasonable offer of settlement of the past unlawful facilities charges made to Pierre Radio. Absent any prompt response and reasonable settlement efforts, we will be left with no choice but to seek a remedy to this situation from an appropriate regulatory body. We hope this matter can be resolved by negotiation between the parties, and we look forward to a swift resolution of this matter. As always, if you have any questions or concerns, please do not hesitate to contact undersigned counsel.

Very truly yours,



Benjamin J. Aron

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TELEPHONE
605-224-5825
FAX
605-224-7102

December 22, 2004

Eldon Lindquist
1520 North Garfield Avenue
Pierre, South Dakota 57501

Re: Claim of Pierre Radio Paging against Venture Communications Cooperative

Dear Eldon:

As you are aware, I represent Venture Communications Cooperative. We have had conversations and meetings with you in the past concerning your alleged claim against Venture. As a follow-up to those conversations regarding this matter, this letter will serve as a summary of Venture's position concerning your request for a settlement offer from Venture.

Initially, I would note that Venture does not concede the validity of your claim, nor does Venture believe that the South Dakota Commission has jurisdiction of this matter. By engaging in settlement discussions with you, Venture is not waiving its rights to contest any claim you may ultimately file, either on the merits or jurisdictionally.

Having stated that, Venture is also interested in finally resolving your claim. It is extremely difficult, however, to quantify the amount of any overcharges by Venture of Pierre Radio Paging. You have not made a specific monetary demand from Venture, but have merely alleged improper charging for Venture's traffic that goes over the trunk and was terminated by Pierre Radio Paging.

According to our technician's best estimates, outbound and inbound traffic over the trunks is basically equal: when you factor in IXC traffic, Venture estimates that approximately 40% of the traffic is Venture's traffic outbound to Pierre Radio Paging, and 60% of the traffic is Pierre Radio Paging traffic that terminates in Venture's exchanges. You claim that Venture can legitimately bill for only the 60% inbound traffic.

Pierre Radio Paging leased three trunks from Venture, at the rate of \$70.00 per trunk per month. Pursuant to the applicable FCC statute of limitations, your claim, to the extent it is valid at all, can go back for only two years. Working through these figures, you can see that the maximum possible overcharge was \$2,016.00 (\$70.00 x 3 trunks x 24 months x 40%).

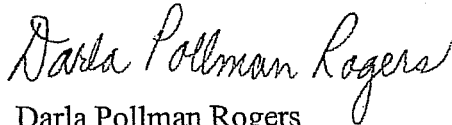
Eldon Lindquist
December 22, 2004
Page 2

Accordingly, in an attempt to resolve this matter, and without in any way agreeing to the jurisdiction of the Commission or the merits of the claim, Venture hereby makes a settlement offer in the amount of \$2,000.00. This would, of course, be on the condition that you and Pierre Radio Paging grant Venture a full and complete release of any past, present or future claims.

This offer is intended solely as an offer in the course of negotiations by way of settlement and compromise, and shall in no way constitute an admission of fault or error on the part of Venture.

Please advise me if these terms are acceptable.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

CC: Randy Houdek