

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

In the Matter of the Petition of Venture)	
Communications Cooperative for the)	
Arbitration Pursuant to the Tele-)	Docket No. T06-159
Communications Act of 1996 to Resolve)	
Issues Relating to an Interconnection)	
Agreement with Alltel Communications,)	
Inc.)	

RESPONSE TO AFFIDAVIT OF RON L. WILLIAMS

Venture Communications Cooperative (“Venture”), by and through its attorney of record, Darla Pollman Rogers of Riter, Rogers, Wattier & Brown, LLP, and hereby submits the following Response to the Request of Alltel Communications, Inc. (“Alltel”) to transfer the arbitration docket (TC06-159) to the Office of Hearing Examiners (“OHE”) and supporting Affidavit of Ron L. Williams.

1. Resistance to Request

Venture continues to resist Alltel’s request to transfer this docket to the OHE, for the reasons previously set forth in Venture’s Opposition and oral arguments presented to the South Dakota Public Utilities Commission (“Commission”) on October 30 and 31, 2006. Subsequent to said Commission meeting, Alltel submitted an Affidavit of Ron L. Williams in an attempt to cure its request for transfer, which was defective on its face. For the reasons set forth herein, it is Venture’s position that the submitted Affidavit fails to cure Alltel’s request, which should be denied by this Commission.

2. Historical Perspective

While South Dakota does not formally maintain or recognize legislative history, a brief review of the background of SDCL 1-26-18.3 is helpful to support Venture’s position that the statute is not appropriately applied to this arbitration docket.

There is no South Dakota case law interpreting SDCL 1-26-18.3, and as the statute appears to be unique to South Dakota, case law in other states fails to give guidance.

Research at the agency level, however, reveals that SDCL 1-26-18.3 was enacted to provide aggrieved state employees the option to use the office of hearing examiners to hear their complaints.¹ State employee grievances are handled by the Bureau of Personnel, which is a state agency. The Bureau typically contracts with the OHE to hear all employee benefit cases. Employee grievances related to termination or suspension were traditionally handled by the Career Services Commission, a quasi-governmental commission established via administrative rule to handle such cases, unless transferred by the Bureau.

SDCL 1-26-18.3 was lobbied into law to allow a grieved employee, not just the Bureau, to request a transfer of the case to the OHE². Typically, such cases involved a termination of employment, which is a potential loss of a property right under the statute, or suspension from employment. In the case of suspension from employment, an aggrieved employee could only request a transfer of the case from the Career Services Commission to OHE if the controversy exceeded \$2,500.00. The challenge for this Commission is the appropriate application of the statute to other types of cases, such as TC06-159, which clearly do not fall within the four corners of the language of the statute.

3. Appropriate Application of Contested Amount

As noted in Venture' Opposition, Alltel's Request for Transfer is defective on its face because Alltel failed to allege which of the threshold requirements of transfer

¹ The background and application of SDCL 1-26-18.3 by one South Dakota agency were acquired by conversation with the attorney for the Bureau of Personnel.

² The primary advocate for SDCL 1-26-18.3 was an attorney/former state senator whose practice included representation of state employees. Prior to becoming a state senator and private practice attorney, the author of SDCL 1-26-18.3 was a hearing examiner.

it claims to have met to allow the case to be transferred: loss of a property right or controverted amount of more than \$2,500.00. With submission of the Affidavit of Ron L. Williams, it appears that Alltel is requesting transfer on the basis of an amount in controversy of \$2,500.00 or more, but the Affidavit still fails to meet the requirements of the statute.

Contrary to the employment grievance cases noted above where the amount of controversy is clearly ascertainable from the days of unemployment, the controversy in docket TC06-159 concerns the establishment of the rules or parameters that are necessary to determine the amount of compensation to be exchanged between the parties, if any. In his Affidavit, Mr. Williams states that “[t]he parties are in dispute about the appropriate compensation for all traffic exchanged between the networks.” That statement supports Venture’s position that it is the methodology of compensation that this Commission must set, not the amount of compensation. The unsupported link in Mr. William’s Affidavit from “appropriate compensation” to the differences in the positions of the parties is not supported by the pleadings filed with the Commission. For example, in its requested language in a new interconnection agreement with Venture, Alltel proposed a “bill and keep” methodology. See Paragraph 6.4 of Exhibit 1 attached to Venture’s Petition for Arbitration. If this Commission adopts Alltel’s position, which Venture opposes, there would be no amount in controversy between the parties and the threshold requirement (\$2,500.00 amount of controversy) is not met.

With regard to Alltel’s alleged dispute concerning direct interconnection of the parties’ networks, Mr. Williams again acknowledges that the dispute between the parties is “about the method, place, and costs associated with direct interconnection.”

Once again, Alltel is asking this Commission to assume facts not in the pleadings to attempt to meet the statutory requirements for transfer. The amount in controversy, if any, is entirely contingent upon this Commission's ruling with regard to the method of interconnection. What is in controversy here is establishment of the appropriate rules of compensation (if any) for direct connections, not the amount of compensation.

Alltel has failed in its pleadings to establish a specific dollar amount that is in dispute between the parties, which is a threshold requirement of SDCL 1-26-18.3. In fact, this docket is not about an amount in dispute, and that is why Alltel's request for transfer of this docket is inappropriate. An Affidavit that strains to meet the threshold statutory requirements by plugging hypothetical dollar amounts in a docket that does not purport to deal with the amount of compensation, does not transform the actual issues facing the Commission in arbitration proceedings. This docket is more closely aligned to a rulemaking case than a disputed amount due from one party to another. The purpose of TC06-159 is to establish the rules that determine what amounts are due to which carrier, not to determine the amount in controversy between the parties. That is why this Docket should not be transferred to the OHE.

For the foregoing reasons, plus the additional reasons outlined in Venture's previous written Opposition and oral arguments, which are incorporated herein by this reference, Alltel's request must be denied. Alltel's Affidavit fails to establish the necessary statutory threshold to allow Alltel to transfer this docket to OHE. Venture urges this Commission to deny Alltel's Request to Transfer.

Respectfully submitted this 9th day of November, 2006.

Riter, Rogers, Wattier & Brown, LLC

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Certificate of Service

The undersigned, attorney for Venture Communications Cooperative, hereby certifies that a true and correct copy of the foregoing Response to Affidavit of Ron L. Williams was served on this 9th day of November, 2006, by mail and email upon:

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