



Dustin Johnson, Chair  
Gary Hanson, Vice Chair  
Steve Kolbeck, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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Julie Johnson  
Office of Hearing Examiners  
210 East 4<sup>th</sup> Street  
Pierre, SD 57501

VIA E-MAIL ONLY

RE: IN THE MATTER OF THE PETITION OF VENTURE COMMUNICATIONS  
COOPERATIVE FOR SUSPENSION OR MODIFICATION OF LOCAL DIALING  
PARITY AND RECIPROCAL COMPENSATION OBLIGATIONS

SDPUC Docket: TC06-181  
OHE File: PUC07-01

Dear Ms. Johnson:

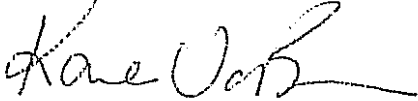
In anticipation of tomorrow's hearing and as a result of party concern this correspondence shall serve as notice regarding PUC Staff's position as it pertains to the Motion to Dismiss in the above docket. Staff does not have an opinion regarding Discovery issues and will remain silent regarding the same. First, by way of clarification, Staff's sees its role in tomorrow's hearing very similar to that role it takes on at a regular Commission proceeding. Staff, therefore, respectfully requests to make a recommendation regarding the Motion to Dismiss only after the parties and interveners have presented arguments.

Staff will recommend denial of Alltel and RCC's Motion to Dismiss Venture's Petition. Alltell is looking to substantially change the way Venture currently does business with wireless telecommunications companies. More specifically, it seeks to change the current relationship in both physical and financial terms between it and Venture. It made such a request for change through Section 251 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (collectively, the Act). Venture clearly believes such a request will be detrimental and, therefore, took advantage of Section 251(f)(2) of the Act to seek a waiver regarding particular Alltel requests. Section 251(f)(2) of the Act allows, under specific factual circumstances, a waiver regarding dialing parity and reciprocal compensation among other duties of telecommunication carriers, both of which are at issue in this proceeding and addressed by the Motion to Dismiss.

The Standard for a Motion to Dismiss requires a complete lack in genuine issue of material fact and one in which the moving party is entitled to judgment as a matter of law. See Jensen Ranch, Inc. v. Marsden, 440 NW2d 762, 764 (SD 1999), SDCL 15-6-56.

As previously indicated, the legal source of Venture's Petition clearly allows for such a request. The request, however, calls for specific factual inquiry clearly not appropriate at this juncture. Staff, therefore, intends to recommend denial of the Motion to Dismiss currently before the Office of Hearing Examiners.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara Van Bockern". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kara Van Bockern

- c. Darla Rogers via email
- Mary Sisak/Ben Dickens via email
- Rich Coit via email
- Steve Rowell via email
- Sean Simpson via email
- Elizabeth Kohler via email
- Talbot Wiczorek via email