

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT
OF KENNEBEC TELEPHONE
COMPANY, INC. AGAINST ALLTEL
COMMUNICATIONS, INC. FOR
NONPAYMENT OF TRANSITING
CHARGES

TCO8-031
ALLTEL COMMUNICATIONS, INC.'S
STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT BASED UPON LACK
OF SUBJECT MATTER JURISDICTION

Alltel Communications, LLC (hereinafter "Alltel") by and through its counsel of record, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, respectfully submits its Statement of Material Facts.

1. Alltel and Kennebec Telephone Company, Inc. (hereinafter "Kennebec") entered into an Interconnection Agreement on January 1, 1999, which contained a transiting rate of \$.0005 per mile. See Exhibit A, May 5, 2009, Affidavit of Rod Bowar at ¶¶ 2, 3 ("Bowar Aff.).
2. The 1999 Agreement was terminated upon the January 1, 2003, adoption of a new Interconnection Agreement between the parties. Id. at ¶ 5.
3. The 2003 Agreement did not discuss transiting services nor did it provide a rate for transiting. Id. at ¶ 6.
4. The transiting rate contained in the 1999 Agreement reflected a standard rate that was negotiated for all ILECs by a representative of SDTA and other individuals. See Exhibit B, May 20, 2009, Affidavit of Ron Williams at ¶ 3 ("Williams Aff.").
5. This rate was not reached based upon an assessment of actual networks. Id. Rather, it was merely a standard rate for all carriers. Id.
6. Alltel and Kennebec entered into negotiations for a network appropriate transiting rate upon the termination of the 1999 Agreement. See Bower Aff at ¶ 7.

7. Alltel began protesting Kennebec's continued assessment of the 1999 transiting rate in 2004. See Williams Aff at ¶ 4.

8. Alltel informed Kennebec it had reached an agreement to compensate Qwest Communications for transiting the subject calls and therefore any charges assessed by Kennebec should be collected from Qwest. Id. at ¶ 6.

9. In 2007, Alltel ceased payment of the contested charges because the parties had not reached an agreement on the rate, the parties had not entered into an agreement regarding transiting, and the charges remained properly assessed against Qwest instead of Alltel. Id. at ¶ 7.

10. Kennebec subsequently filed a Complaint with the Commission on February 20, 2008, contending it was due payment for transiting telephone calls from Alltel. See Complaint, TC 08-031.

11. On May 12, 2009, Kennebec filed a Motion for Summary Judgment on its implied contract claim. Although the Commission denied Kennebec's Motion, it indicated in the related Order,

The Commission finds that it has jurisdiction over the matter pursuant to SDCL Chapters 1-26, 49-13, and 49-31.

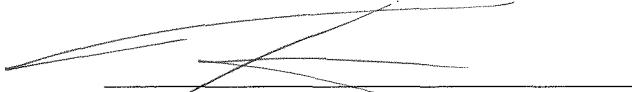
See June 30, 2009 Order Denying Motion for Summary Judgment.

12. Kennebec is an independent telephone company serving less than fifty thousand local exchange subscribers. See Exhibit C, January 15, 2010, Affidavit of Talbot J. Wiczorek, ¶ 2.

13. Kennebec did not elect, under S.D.C.L. § 41-39-5.1, to voluntarily submit itself to Commission rate regulation. Id. at ¶ 3.

Dated this 15 day of January, 2010.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP



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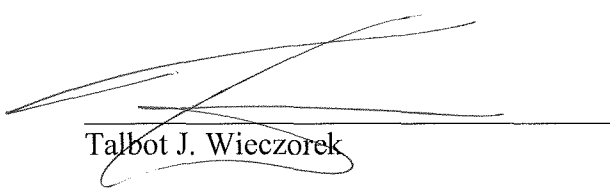
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15 day of January, 2010, I served a true and correct copy of Alltel Communication, Inc.'s Statement of Material Facts in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction electronically to:

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