

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
MOTION FOR SUMMARY
JUDGMENT BASED UPON LACK
OF SUBJECT MATTER JURISDICTION

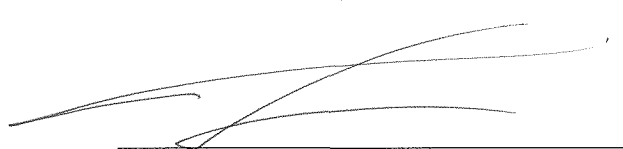
COMES NOW Alltel Communications, LLC (hereinafter "Alltel") by and through its counsel of record, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, and hereby submits Alltel Communications, Inc.'s Motion for Summary Judgment Based Upon Lack of Subject Matter Jurisdiction. The South Dakota Public Utilities Commission's (hereinafter "Commission") jurisdictional authority is expressly limited to the powers conferred upon it by statute. The Commission does not have subject matter jurisdiction over this transiting charge dispute because it has not been afforded the statutory authority to adjudicate claims for implied contract or unjust enrichment. Furthermore, while Alltel steadfastly maintains Kennebec Telephone Company, Inc.'s ("Kennebec"), claims lack merit; resolution contrary to Alltel's position would place the Commission in a position where it would be required to determine the appropriate rate for transiting services. However, the Commission lacks jurisdiction to determine transiting rates because Kennebec is exempt from Commission rate regulation pursuant to S.D.C.L. § 41-39-5.1. Therefore, Kennebec's Complaint is properly dismissed as this Commission lacks subject matter jurisdiction over the issues raised therein.

Alltel respectfully requests that this Commission summarily dismiss Kennebec's Complaint as the Commission lacks subject matter jurisdiction over the issues raised therein. A

Memorandum in Support and Statement of Material Facts have been filed simultaneously and are incorporated herein through this reference.

Dated this 15 day of January, 2010.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP



Talbot J. Wieczorek
Attorneys for Alltel Communications, LLC
440 Mt. Rushmore Road
P.O. Box 8045
Rapid City, SD 57709
606-342-1078
Fax: 605-342-0480

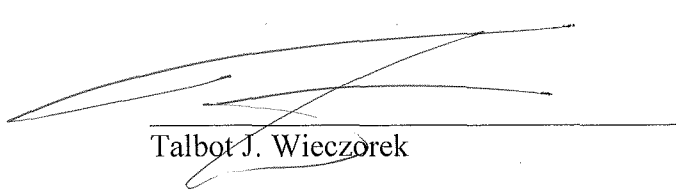
CERTIFICATE OF SERVICE

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

MS KARA SEMMLER
STAFF ATTORNEY
SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
kara.semmler@state.sd.us

MR DAVID JACOBSON
STAFF ANALYST
SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
david.jacobson@state.sd.us

MS MEREDITH A MOORE
RYAN TAYLOR
ATTORNEY AT LAW
CUTLER & DONAHOE LLP
100 NORTH PHILLIPS AVENUE 9TH FLOOR
SIOUX FALLS SD 57104-6725
meredithm@cutlerlawfirm.com
ryant@cutlerlawfirm.com



Talbot J. Wiecezorek