

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

TC08-031

**COMPLAINANT'S STATEMENT
OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Comes now the Complainant, Kennebec Telephone Company, Inc. ("Kennebec"), and submits this Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment:

1. As of January 1, 1999, Kennebec Telephone entered into an interconnection agreement (the "1999 Agreement") with WWC License, LLC, n/k/a Alltel Communications, Inc. ("Alltel") which agreement provided for the payment of any transiting services provided by Kennebec to WWC License, LLC. See Complaint at ¶4; Alltel's Answer to Complaint dated March 21, 2008 ("Alltel Answer") at ¶4; Affidavit of Rod Bowar at ¶¶2, 3 ("Bowar Aff."). The 1999 Agreement provided that transit service would be provided at an agreed upon per minute rate of \$.0005 per mile. Id.

2. Pursuant to the terms of the 1999 Agreement, Kennebec Telephone provided Alltel with transiting service from Kennebec's central office in Presho, South Dakota, to a meet point with Golden West Telecommunications Cooperative, Inc. along the White River. See Complaint at ¶5; Bowar Aff. at ¶4.

3. The parties terminated the 1999 Agreement effective as of January 1, 2003, and entered into a new interconnection agreement which became effective as of the same date, January 1, 2003 ("2003 Agreement"). See Complaint at ¶4; Alltel Answer at ¶4; Bowar Aff. at ¶5.

4. By its terms, the 2003 Agreement specifically superseded the terms of the 1999

Agreement. The 2003 Agreement did not address transiting. See Complaint at ¶4; Bowar Aff. at ¶6.

5. In the spring of 2004, Kennebec Telephone requested that Darrel Gomarko of Consortia Consulting, Inc. enter into negotiations for the development of a transiting agreement with Alltel. These negotiations commenced in the spring and Kennebec Telephone, through its agent, proposed a specific written transiting agreement to Alltel. See Complaint at ¶5; Bowar Aff. at ¶7.

6. During the timeframe of the negotiations, Kennebec Telephone continued to provide transiting service for Alltel. Alltel continued to use these services and Kennebec continued to invoice Alltel for the same. See Bowar Aff. at ¶8.

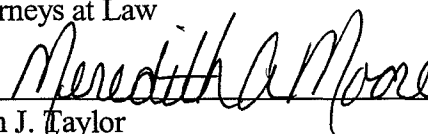
7. In approximately April 2007, Alltel ceased paying Kennebec Telephone for transiting services and since that time has made no payments to date, despite repeated requests. See Complaint at ¶¶8, 9; Alltel Answer at ¶6; Bowar Aff. at ¶10. Kennebec continues to provide transiting services to Alltel. See Bowar Aff. at ¶¶8-9.

8. There are direct interconnects available to Alltel in Kennebec's exchange; however, Alltel has chosen not to use these interconnects and therefore a transiting charge is applicable and appropriate. See Bowar Aff. at ¶9.

9. The amount currently due and owing Kennebec Telephone from Alltel is \$266,491.26. See Bowar Aff. at ¶11, Ex. 1.

Dated at Sioux Falls, South Dakota, this 12th day of May, 2009.

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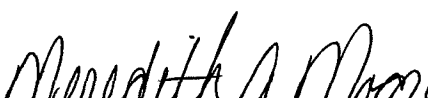
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent electronically to the following on this 12th day of May, 2009:

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