BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER ____________

IN THE MATTER OF THE COMPLAINT OF INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC., and WEST RIVER COOPERATIVE TELEPHONE COMPANY, AGAINST MCI COMMUNICATIONS SERVICES, INC., d/b/a VERIZON BUSINESS SERVICES	)	COMPLAINT

Interstate Telecommunications Cooperative, Inc., ("ITC") and West River Cooperative Telephone Company ("West River") (collectively "LECs") by and through their attorneys of record, Riter, Rogers, Wattier & Northrup, LLP, Pierre, South Dakota, hereby submit this Complaint against MCI Communications Services, Inc., d/b/a Verizon Business Services ("Verizon") for failing to pay intrastate access charges at the rates approved by the South Dakota Public Utilities Commission ("Commission") and set forth in LECs' applicable tariff[1] on file with the Commission. This is a Complaint pursuant to ARSD 20:10:01:07.01 and SDCL Ch. 49-13 and 49-31.

PARTIES

1. ITC is a South Dakota Cooperative with its principal place of business at 312 4th Street West, Clear Lake, South Dakota, 57226. ITC is a local exchange carrier that provides various telecommunications services, including but not limited to intrastate switched access services.

2. West River is a South Dakota cooperative with its principal place of business at 901 Coleman Avenue, Bison, South Dakota, 57620. West River is a local

[1] LECs' applicable tariff is the Local Exchange Carriers Association ("LECA") tariff on file with the Commission.

exchange carrier that provides various telecommunications services, including but not limited to intrastate switched access services.

3. Verizon is a corporation with offices at 22001 Loudoun County Parkway, Ashburn, Virginia, 20147. Verizon is authorized to do business in the state of South Dakota, including the provision of interexchange telecommunications services to various residential and business customers in South Dakota.

BACKGROUND

4. In its Report and Order in WC Docket No. 10-90, etc., FCC Release No. 11-161 (November 18, 2011), the Federal Communications Commission ("FCC") ordered that intrastate Toll VoIP-PSTN Traffic would, in absence of an interconnection agreement, be billed at intrastate rates equal to interstate switched access rates.

5. On April 25, 2012, the FCC in its Second Order on Reconsideration, clarified that its new compensation methodology related to Toll VoIP-PSTN Traffic, which requires the development of "Percent VoIP Usage" factors, would apply only to terminating Toll VoIP-PSTN Traffic through June 30, 2014, and thereafter, would apply to all VoIP-PSTN traffic (originating and terminating).

6. In response to the FCC's Order, the Local Exchange Carriers Association ("LECA") amended its intrastate access tariff to comply with the new FCC requirements. LECs are participating Telephone Companies in the LECA tariff.

7. Under the amended tariff language, interexchange carriers' ("IXC") customers terminating Toll VoIP-PSTN Traffic to local Telephone Company end user customers are required to assist in determining Toll VoIP-PSTN minutes of use (MOU) by calculating and furnishing to Telephone Company a Terminating Percent VoIP Usage

("T-PVU") factor. In addition, the tariff language specifically requires that customer IXCs provide, along with any supplied T-PVU factor, supporting documentation allowing for verification by the Telephone Company. (LECA Tariff No. 1, Section 2.3.11(C)(5)(c)). Percent VoIP usage factors, including the T-PVU as described by the terms of the LECA Tariff, are to be "based on information that is verifiable by the Telephone Company including, but not limited to, the number of the Customer's retail VoIP subscriptions in the state (reported on FCC Form 477, as described in the FCC Order), traffic studies, actual call detail, or other relevant and verifiable information." After the Telephone Company is able to verify the customer IXC provided factor, the Telephone Company may use that factor to bill intrastate T-PVU MOU at rates equivalent to its interstate access rates.

8. Per the LECA Tariff, which was approved by this Commission on April 4, 2012,[2] if the IXC does not provide the Telephone Company with a T-PVU factor, or if the Telephone Company is not able to verify the factor, the Telephone Company is directed to use a factor of zero ("0"). (LECA Tariff No. 1, Section 2.3.11(C)(5)(c)(i)).

LECs' CLAIM

9. For a period of time from May of 2012 through October of 2012, Verizon identified in correspondence to the LECs a T-PVU factor that was, for some months, as high as 30%.

[2] LECA first submitted amendments to its tariff to comply with the FCC's 11-161 Order, and those amended tariff pages were approved by the Commission on April 4, 2012 (Docket TC11-101). LECA modified its tariff again in July of 2012, in order for the LECA tariff to be in compliance with the FCC's April 25, 2012, Second Order of Reconsideration in WC Docket 10-90, etc., FCC Release No. 12-47. The amended tariff was approved by the Commission on October 2, 2012, with an effective date of July 13, 2012 (Docket TC12-115).

10. The LECs disputed the T-PVU factors supplied by Verizon and have pursuant to their established access tariff provisions requested verifiable information to support the factors. Verizon has not responded after repeated requests and has failed to provide any information that would allow the LECs to review and reasonably verify Verizon's claimed T-PVU factors.

11. In disregard of the specific provisions in the LECs' access tariff that would permit implementation of a factor of 0% in those instances where a customer IXC fails to provide verifiable information to support a claimed T-PVU factor, Verizon has unilaterally applied its unsupported T-PVU factor to the minutes billed on the LECs' CABs invoices and has arbitrarily and unlawfully withheld payment of LECs' tariffed access rates for those MOU it claims to be terminating Toll VoIP-PSTN traffic.

12. The LECs have a valid tariff on file with the Commission. Pursuant to SDCL § 49-13-12.1, an approved tariff constitutes prima facie evidence that rates or prices and terms set forth therein are fair and reasonable.

13. Pursuant to the LECs' applicable tariff provisions, Verizon ordered, used, and benefited from intrastate access services received from the LECs. Verizon ordered access services from ITC under two separate CIC codes, CIC 0222 and CIC 0555, and from West River under two separate CIC codes, CIC 0222 and CIC 0555. For access services ordered under these CIC codes, Verizon identified a T-PVU factor that for some of the months from May through October of 2012 was as high as 30%. The LECs notified Verizon that they were disputing the factors claimed by Verizon, but Verizon failed to respond and provide any supporting information as to how their factors were arrived at or established. Accordingly, per the specific terms of its access tariff, the LECs

implemented a T-PVU factor of 0 and proceeded to bill all of Verizon's terminating toll traffic at the same rate (at its standard intrastate access rates). Verizon ignored the LECs CABs invoices and instead "implemented" its claimed factors and withheld payment to the LECs for a number of months in 2012, as follows:

> <u>ITC</u>
> CIC 0222: Verizon withheld payment on the invoices for the months of May, June, September, and October.
>
> CIC 0555: Verizon withheld payment on the invoices for the months of May, August, September, and October.
>
> <u>WEST RIVER</u>
> CIC 0222: Verizon withheld payment on the invoice for the month of June.
>
> CIC 0555: Verizon withheld payment on the invoice for the month of June.

Verizon paid the charges billed by the LECs prior to, during, and after the disputed months listed above. All of the access services covered by these invoices were provided pursuant to the LECs' tariff (the LECA Tariff).

14. Verizon was charged for the access services based upon rates, terms and conditions established in the LECA tariff through this Commission's approval, including all of the Commission approved Toll VoIP-PSTN terminating traffic provisions.

15. The LECs' tariff contains provisions setting forth in very clear terms the appropriate method for establishing PVU factors and resolving PVU disputes. Verizon has proceeded without any regard to these provisions by unilaterally and arbitrarily applying its unsupported, high T-PVU factor, and by unjustifiably withholding payment on each of the invoices listed in Paragraph 13 above. The LECs' tariff sets forth the appropriate method to dispute and mediate PVU factors.

16. There is no provision in the LECs' tariff or in federal or state statute or rule that authorizes the self-help remedy utilized by Verizon, that is, to implement a T-PVU factor without providing supporting information (which would allow for reasonable verification by the LECs) and then based on that unsupported factor to withhold payment on the LECs' CABs bills.

17. The LECs have in a manner consistent with its tariff provisions, on numerous occasions, attempted to contact Verizon to initiate a process that allows for the reasonable identification and verification of all toll VoIP-PSTN MOU sent by Verizon to the LECs for termination, but Verizon refuses to respond and continues to refuse to pay for services it has ordered and used for its long distance services. Verizon's actions, in refusing to follow the procedures in the LECs' tariff relating to Toll-VoIP PSTN traffic and in withholding full payment from the LECs, are unjust and unreasonable, and result in damage to the LECs.

18. Verizon has withheld payment on the above listed invoices leaving a total amount of $43,900.75 still owing for ITC-provided switched access services; and $8,366.07 still owing for West River-provided switched access service. Pursuant to its tariff, the LECs are entitled to payment of the amounts not yet paid, plus late fees and penalties as authorized by the tariff. The LECs are also entitled to interest at the statutory rate for all unpaid balances.

WHEREFORE, the LECs pray for judgment against Verizon as follows:

A. Payment for unpaid intrastate switched access services and late payment penalties in an amount to be proven at hearing;

B. For pre-judgment interest and post-judgment interest on the unpaid balances herein; and

C. For such other and further relief as the Commission deems just.

DATED this 16th day of January, 2018.

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Attorneys for Interstate Telecommunications Cooperative, Inc., and
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Interstate Telecommunications Cooperative Inc., hereby affirms that the statements of fact above are accurate to the best of its knowledge.

Interstate Telecommunications Cooperative Inc.

By: _________________________

Bryan Roth, CEO

West River Cooperative Telephone Company, hereby affirms that the statements of fact above are accurate to the best of its knowledge.

West River Cooperative Telephone Company

By: Colle Nash

Colle Nash, General Manager