

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
OF PRAIRIEWAVE TELECOMMUNICATIONS
INC. AGAINST AT&T CORP

DOCKET NO. CT05-007

**AT&T'S ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

AT&T Communications of the Midwest, Inc. ("AT&T"), through its undersigned counsel, hereby Answers the Complaint of PraireWave Telecommunications, Inc. ("PW") and submits AT&T's Counterclaims.

PRELIMINARY STATEMENT

This case is about PW's intrastate switched access rates. PW is attempting to extract unjust and excessive intrastate switched access rates from AT&T and its Iowa customers. In its complaint, PW asks the Board to condone PW's access rates set at a level dramatically higher than the local incumbent's and higher than South Dakota law allows or should allow. Pursuant to ARSD § 20:10:01:11.01, AT&T's counterclaim requests that the Commission find PW's rates to be unjust, unreasonable, and unenforceable, among other things.

ANSWER

1. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the complaint regarding PW's principal place of business.

2. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the complaint; therefore, AT&T denies such allegations.

3. AT&T denies the allegations contained in Paragraph 3 of the complaint regarding its principal office, and otherwise admits that it is authorized to provide intrastate toll service in South Dakota.

4. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint regarding PW's switch, its location, the customers served thereby or within the time period alleged, and therefore, AT&T denies such allegations. AT&T admits that PW provided some intrastate switched access service to AT&T.

5. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 regarding PW's approved rates and PW's charges with respect thereto, and therefore, AT&T denies such allegation:

6. AT&T admits the allegations contained in Paragraph 6 of the complaint regarding PW's monthly invoices, and otherwise denies PW's allegations regarding AT&T's payments.

7. AT&T denies the allegations contained in Paragraph 7 of the complaint regarding its legal obligations in South Dakota and being unjustly enriched.

8. AT&T denies the allegations contained in Paragraph 8 of the complaint.

9. AT&T denies the allegations contained in Paragraph 9 of the complaint.

10. AT&T admits to the allegations in Paragraph 10 to the extent that PW made informal requests for payment, but otherwise denies the balance of the allegations.

11. AT&T denies the allegations contained in Paragraph 11 of the complaint regarding the payment of \$ 50,444.54 owed to PW.

AFFIRMATIVE DEFENSES

In addition to the specific responses to the numbered paragraphs of PW's complaint, AT&T asserts the following affirmative defenses:

First Affirmative Defense

12. PW has failed, in whole or in part, to state a claim upon which relief may be granted.

Second Affirmative Defense

13. PW's claims are barred, in whole or in part, by the doctrines of acquiescence, laches, estoppel, or waiver.

Third Affirmative Defense

14. PW's claims are barred by unclean hands and its violation of South Dakota law for, among other things, its abusive practices that undermine competition and limit or prohibit fair access to its end-user customers.

Fourth Affirmative Defense

15. PW's claims for damages, cost, expenses, pre and post judgment interest are barred because AT&T did not violate any duty owed to PW under any law, statute, code or otherwise. Further, all of PW's claims, whether for damages or indebt or otherwise, are barred by provisions of applicable contracts.

Fifth Affirmative Defense

16. AT&T has at all times and in all relevant manner acted reasonably, as necessary to serve legitimate business purposes, in furtherance of trade, in good faith, and with the purpose and effect of promoting, encouraging, or increasing competition.

Sixth Affirmative Defense

17. Pursuant to ARSD § 20:10:27:02, the Commission has subject matter may jurisdiction over PW's intrastate access rates and may suspend such rates as unjust, unreasonable, ineffective prior to December 29, 2004 or later and unenforceable.

Seventh Affirmative Defense

18. AT&T reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

COUNTERCLAIMS

Jurisdiction and Venue

19. As admitted in paragraphs 1 and 2 of PW's complaint, PW has its principle place of business in Sioux Falls, South Dakota and is apparently authorized to provide intrastate access service, among others, in South Dakota.

20. As further admitted in paragraphs 4 and 5 of PW's complaint, PW provides intrastate switched access services in South Dakota pursuant to a tariff apparently effective on or after December 29, 2004.

21. AT&T Communications of the Midwest, Inc. ("AT&T") is a telecommunications carrier authorized by the Commission to provide intrastate toll services in the state of South Dakota.

22. The Commission has jurisdiction over the rates of PW and any disputes related to such rates.

23. By filing its complaint with the Commission, PW has waived any claim that its intrastate switched access rates are beyond the Commission's jurisdiction.

Allegations

24. PW charges AT&T for "intrastate switched access service" where PW's local end user customers have chosen AT&T as their preferred in-state toll carrier, and where AT&T terminates calls to PW's end-user customers.

25. The rate PW imposes upon AT&T for intrastate switched access service is approximately \$ 0.07 per minute of use.

26. In contrast, Qwest Corporation's Commission-approved, intrastate switched access rate for serving customers in the same exchanges is less than \$ 0.06 per minute of use.

27. AT&T has no other means of reaching PW's local customers that have chosen AT&T's in-state toll service, but to go through PW's network.

28. AT&T serves South Dakota customers across its service territory. PW's intrastate switched access rates, which are much higher than those of Qwest's, create a disincentive for AT&T and other stand alone toll providers to offer such service in exchanges where the CLEC access rates are excessively high.

29. PW unilaterally sets and seeks to impose unjust and unreasonable rates on competitors, and because PW places such rates in its tariffs, it seeks to engage the Commission in its efforts to enforce unjust and unreasonable rates.

30. Neither AT&T nor any other in-state toll competitor of PW has any practical means of encouraging end-user customers to select local carriers that do not abuse the system.

Counts

I. PW Conduct and its Intrastate Access Rates Are Unjust, Unreasonable, Discriminatory and Undermine Competition

31. AT&T incorporates herein, by reference, paragraphs 25 through 30.

32. Pursuant to ARSD 20:10:27:02 & 20:20:29:02 and SDCL 49-31-81, AT&T may not avoid PW's excessive access rates and still comply with its interconnection obligations in the state of South Dakota.

33. Pursuant to ARSD 20:10:27:02, AT&T requests that the Commission investigate the conduct of PW in relation to its intrastate switched access rates, and find that PW's conduct in association with that service and its rates is inadequate, discriminatory and harmful to competition. AT&T further requests that the Commission find that PW's rates, themselves, are unjust and unreasonable.

Prayer for Relief

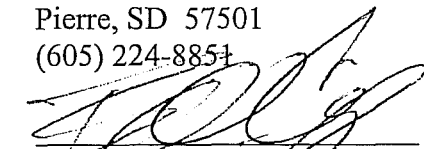
WHEREFORE, AT&T prays the Commission grant AT&T the following relief:

1. Dismiss PW's complaint with prejudice;
2. Grant AT&T's request for an investigation of PW's conduct and intrastate switched access rates;
3. Find further that PW's intrastate switched access rates are unjust, unreasonable and harmful to the public interest;
4. Order PW to set its intrastate switched access rates at reasonable levels; and

5. Order such other relief as the Commission deems necessary.

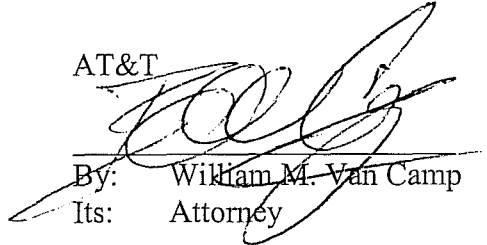
Dated this 19^h day of December, 2005.

Olinger, Lovald, McCahren &
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117 E. Capitol
PO Box 66
Pierre, SD 57501
(605) 224-8854


By: William M. Van Camp
Attorney for AT&T

AT&T Communications of the Midwest, Inc., by and through its undersigned counsel, hereby affirms that the statement of facts above are accurate to the best of its knowledge.

AT&T


By: William M. Van Camp
Its: Attorney

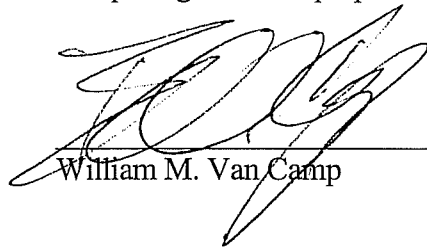
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of AT &T was served via the methods indicated below on the 19th day of December, 2005, addressed to:

William P. Heaston
General Counsel
PrairieWave Telecommunications, Inc.
5100 S. Broadband Lane
Sioux Falls, SD 57108

Sara Greff
Staff Attorney
SD PUC
500 E. Capitol
Pierre, SD 57501

by mailing was that by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.



William M. Van Camp