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April 11, 2005

Pamela Bonrud, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RECEIVED  
APR 11 2005  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: DOCKET NO. CT05-\_\_\_\_\_  
COMPLAINT OF WWC AGAINST VENTURE COMMUNICATIONS COOP.  
Our File Number 05-028D

Dear Pam:

Please find enclosed herein original and ten copies of the Answer and Counterclaim of Venture Communications Cooperative to the WWC Complaint.

By copy of this letter, I am also serving Talbot J. Wiczorek, the attorney for WWC.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

CC: Randy W. Houdek (with enclosure)  
Talbot J. Wiczorek (with enclosure)

RECEIVED

APR 11 2005

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT  
OF WWC LICENSE LLC AGAINST  
VENTURE COMMUNICATIONS CO-  
OPERATIVE

DOCKET NO. CT05-\_\_\_\_\_  
ANSWER AND COUNTERCLAIM  
OF VENTURE COMMUNICATIONS  
TO COMPLAINT OF WWC

COMES NOW VENTURE COMMUNICATIONS COOPERATIVE (hereinafter "Venture"), by and through Riter, Rogers, Wattier & Brown, LLP, of 319 South Coteau Street, Pierre, South Dakota 57501, and hereby submits this Answer to the Complaint filed by WWC License LLC (hereinafter "WWC") before the South Dakota Public Utilities Commission ("Commission"), and asserts this Counterclaim against WWC, pursuant to ARSD 20:10:01:11.01 and SDCL §15-6-13(a).

JURISDICTION

1. The entire jurisdictional paragraph of the Reciprocal Interconnection, Transport and Termination Agreement ("Interconnection Agreement" or "Interconnection Agreements") provides as follows:

14.16 Governing Law – For all claims under this Agreement, that are based upon issues within the jurisdiction of the FCC or governed by federal law, the Parties agree that the remedies for such claims shall be governed by the FCC and the Act. For all claims under this agreement that are based upon issues within the jurisdiction of the Commission or governed by state law, the Parties agree that the jurisdiction for all such claims shall be with such Commission, and the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of South Dakota without reference to conflict of law provisions.

2. This Action will require an interpretation and adjudication of the contractual rights and obligations between parties.

3. As a general rule, administrative agencies and commissions cannot consider or adjudicate contractual rights and obligations between parties, except where they have been granted power by organic or valid statutory enactment to do so. See In re Northwestern (Hub City), 560 NW 2d 925 (SD 1997), quoting from Williams Elec. Co-op v. Montana-Dakota Util. Co., 79 NW 2d 508 (ND 1956).

4. Consideration and adjudication of contractual rights and obligations between parties are issues within the jurisdiction of the Circuit Courts of the State of South Dakota.

5. Accordingly, this Commission may choose to defer jurisdiction of this case to the South Dakota Circuit Courts.

ANSWER

6. Venture realleges Paragraphs 1-5 of this Answer.

7. The Complaint of WWC fails to state a claim upon which relief can be granted, and should therefore be dismissed.

8. Venture denies each and every matter and allegation in WWC's Complaint, unless herein specifically admitted or qualified.

9. Venture admits Paragraphs 1 and 2 of WWC's Complaint.

10. Venture admits that a portion of Section 14.16 of the Interconnection Agreement is accurately set forth in Paragraph 3 of the Complaint, but denies that Paragraph 3 sets forth all of the jurisdictional provisions of the Interconnection Agreement.

11. Venture admits that the Interconnection Agreement states that the effective date of the Agreement is January 1, 2003 (Paragraph 13.1 of the Interconnection Agreement), but deny all other matters stated in Paragraph 4 of the Complaint.

12. Venture admits that the previous Interconnection Agreements terminated on December 31, 2002, but deny all other allegations in Paragraph 5 of the Complaint.

13. Venture denies Paragraph 6 of the Complaint.

14. Venture denies all allegations contained in Paragraph 7 of the Complaint, including but not limited to the amount of WWC's calculations, that any interest is due under the Interconnection Agreement, and the figures contained in Exhibit B of the Complaint.

15. Venture denies Paragraphs 8, 9, 10, 11, and 12 of the Complaint.

16. Venture admits that portion of Paragraph 13 alleging WWC requested Venture to refund the money, and admits to receipt of a letter from Talbot J. Wieczorek dated February 14, 2005, which is attached to Plaintiff's Complaint as Exhibit C. Venture denies all other allegations in Paragraph 13, and specifically denies the applicability of SDCL §49-13-14.1 or that WWC is entitled to double its damages.

#### AFFIRMATIVE DEFENSES

17. Venture realleges Paragraphs 1 through 16 of this Answer.

18. As an affirmative defense, Venture alleges that WWC's Complaint is barred by the Statute of Limitations.

A. On or about March 1, 2003, WWC and attorneys for all South Dakota Rural Telecommunications Companies (RTCs), including Venture, entered into a Settlement Agreement that set forth the basic terms of the agreed-upon settlement for interconnection between WWC and the RTCs. (See Confidential Exhibit A).

B. Said Settlement Agreement established the effective date of interconnection as January 1, 2003.

C. Said Settlement Agreement established a two-year Statute of Limitations for past due reciprocal compensation charges.

D. WWC alleges that Venture owes WWC for past due reciprocal compensation charges, but WWC failed to initiate the action within two years of the effective date of the Interconnection Agreement, and thus WWC's claim is barred by the Statute of Limitations agreed to by the parties in the Settlement Agreement.

19. As an affirmative defense, Venture alleges that WWC did not comply with the terms and conditions of the Interconnection Agreement, as hereinafter set forth, and WWC is thus estopped from filing an action against Venture.

20. The Interconnection Agreement sets forth the effective date of the Agreement, but is silent as to the method of truing up reciprocal charges back to January 1 of 2003.

21. Venture did not charge the negotiated rates until approved by the Commission and recalculated by the Companies, because of uncertainty as to whether the Commission would approve the rates set forth in the Interconnection Agreements for retroactive application.

A. Ratemaking authority delegated to State Public Utilities Commissions has generally been characterized as a legislative function; and accordingly, it has often been held that rates established in the utility ratemaking process cannot be applied retroactively. See Peoples Natural Gas Company vs. Minnesota Public Utilities Commission, 369 N.W.2d 530 (MN 1985); and Northwestern Public Service Company vs. Cities of

Chamberlain, Huron, Mitchell, Redfield, Webster, and Yankton, 265 N.W.2d 867 (SD 1978).

B. Although the rates set forth in the Interconnection Agreements submitted by Venture and WWC were proposed by terms of each of the Agreements to have an effective date of January 1, 2003, it was believed by Venture at the time that this Commission might not adopt the rates retroactively. The general prohibition against retroactive ratemaking referenced above and the lack of any specific statutory authority granted to this Commission to approve rates retroactively is reason to question the validity of the contracted rates back to the January 1, 2003, date in this proceeding.

22. Following Commission approval of the rate retroactive to January 1, 2003, Venture began the process of calculating the reciprocal charges back to January 1, 2003, for its Company.

23. Upon completion of those calculations and commencing with April, 2004, invoices, Venture has been crediting true-up charges on WWC's monthly invoices, and will continue to do so until the total amount, as calculated by Venture, is fully credited.

24. Since the Interconnection Agreement is silent as to the method of trueing up reciprocal charges back to January 1 of 2003, Venture has not breached any terms and conditions of the Interconnection Agreement by crediting such reciprocal charges to accomplish the true-up.

25. Plaintiff has failed to provide sufficient allegations or any legal basis that would entitle Western Wireless to recover double damages or attorneys fees pursuant to SDCL §49-13-14.1.

## COUNTERCLAIM

26. Venture realleges paragraphs 1 through 25 of the Answer.

27. For its Counterclaim against WWC, Venture alleges the following.

## FACTUAL BASIS

28. This Counterclaim is against WWC License LLC, a wireless carrier of 3650 131<sup>st</sup> Ave. SE, Suite 400, Bellevue, Washington, 98006 (“WWC”).

29. The Commission approved Interconnection Agreements between the parties on April 5, 2004.

30. Contained in the Interconnection Agreements were provisions concerning InterMTA Traffic, as follows:

### 1.0 Definitions

“InterMTA traffic” means all wireless to wireline calls, which originate in one MTA and terminate in another MTA based on the location of the connecting cell site serving the wireless end user and the location of the end office serving the wireline end user.

7.2.3 For billing purposes, if either Party is unable to classify on an automated basis the traffic delivered by CMRS as local traffic or interMTA traffic, a Percent InterMTA Use (PIU) factor will be used, which represents the estimated portion of interMTA traffic delivered by CMRS provider.

The initial PIU factor to be applied to total minutes of use delivered by the CMRS Provider shall be 3.0%. This factor shall be adjusted three months after the executed date of this Agreement and every six months thereafter during the term of this Agreement, based on a mutually agreed to traffic study analysis. Each of the Parties to this Agreement is obligated to proceed in good faith toward the development of a method of traffic study that will provide a reasonable measurement of terminated InterMTA traffic.

31. Larry Thompson, a professional engineer from Vantage Point Solutions (“VPS”), attempted to negotiate a traffic study analysis with WWC on behalf of Venture and all other Companies, but despite numerous requests starting as early as

July 17, 2003, and continuing to date, WWC has refused to negotiate in good faith with Mr. Thompson.

32. Mr. Thompson, on behalf of Venture, has calculated an InterMTA Factor of 9.0%.

33. According to the calculations for Venture, this would result in a WWC payment shortfall, on a monthly basis, for monthly billings prior to July 1, 2004, with anticipated increases in that amount for billings after July 1, 2004.

34. WWC's failure to negotiate in good faith, as specifically required by the Interconnection Agreement, constitutes a breach of said Agreement by Western Wireless.

35. Venture is entitled to a refund from WWC for the amounts due to Venture as a result of continued use of the default InterMTA factor of 3% caused by WWC's continuing refusal to negotiate a new and accurate InterMTA factor.

36. Alternatively and at a minimum, Venture is entitled to offset amounts being credited to WWC with amounts due to Venture following adjustment of the InterMTA Factor.

37. In addition to the duties imposed by the Interconnection Agreements, WWC also has the duty as the originating carrier delivering both local and non-local telecommunications traffic to separately provide the terminating carrier with accurate and verifiable information identifying traffic sent for termination, specifically including percentage measurements that enable the terminating carrier to appropriately classify the traffic as being either local or non-local, and to assess the appropriate applicable transport and termination or access charges. If this accurate and verifiable information is not pro-




vided by the originating carrier, the terminating carrier is authorized to classify all unidentified traffic terminated as non-local traffic for service billing purposes. See SDCL §49-31-110.

38. WWC, by its failure to abide by the terms of the existing Interconnection Agreements, is also acting in violation of SDCL §49-31-110, and by refusing to cooperate in appropriately identifying its terminated traffic is liable for compensation as set forth in the statute (treatment of all traffic as non-local and subject to access charges).

WHEREFORE, VENTURE prays:

1. That this case be transferred to Circuit Court;
2. That WWC's Complaint and all claims asserted therein be dismissed with prejudice, and that WWC recover nothing thereby or thereunder;
3. That judgment be entered in favor of Venture and against WWC, in an amount to be determined at hearing, which represents the amount of underpayment to Venture as a result of the improper and unadjusted InterMTA Factor.
4. Alternatively, that the amount of credits to WWC as calculated by Venture be offset by the amount due and owing to Venture as a result of application of the proper InterMTA Factor.
5. That Venture be awarded costs, disbursements, and attorneys fees incurred herein; and
6. For such other and further relief as the Commission or Court deems just and proper.

DATED this eleventh day of April, 2005.



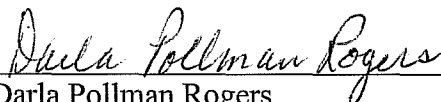
Darla Pollman Rogers  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501  
Telephone 605-224-7889  
Attorney for Venture

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer and Counter-claim of Venture was served via the method(s) indicated below, on the eleventh day of April, 2005, addressed to:

Talbot J. Wieczorek	<input checked="" type="checkbox"/>	First Class Mail
Gunderson, Palmer, Goodsell & Nelson, LLP	<input type="checkbox"/>	Hand Delivery
P. O. Box 8045	<input type="checkbox"/>	Facsimile
Rapid City, South Dakota 57709	<input type="checkbox"/>	Overnight Delivery
	<input checked="" type="checkbox"/>	E-Mail

Dated this eleventh day of April, 2005.



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