

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

IN THE MATTER OF THE COMPLAINT OF)	FINAL DECISION AND
VENTURE COMMUNICATIONS)	ORDER; NOTICE
COOPERATIVE AGAINST NEW CINGULAR)	OF ENTRY
WIRELESS PCS, LLC DBA AT&T MOBILITY)	
)	CT20-001

PROCEDURAL HISTORY

On May 13, 2020, Venture Communications Cooperative (Venture) filed with the South Dakota Public Utilities Commission (Commission) a Complaint against AT&T Mobility for failure to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests at the rates set forth in Venture’s price list.

On May 14, 2020, the Commission electronically transmitted notice of the Complaint to interested individuals and entities on the Commission’s PUC Weekly Filings electronic listserv. On May 14, 2020, the Commission served the Complaint on AT&T Mobility and established an answer deadline of June 2, 2020. On May 28, 2020, Venture, AT&T Mobility, and Commission staff (Parties) filed a Stipulation and Request for Waiver of ARSD 20:10:01:09 requesting the answer deadline be extended to June 16, 2020, to allow the Parties additional time to negotiate. On June 11, 2020, the Commission issued an Order Granting Request for Waiver of ARSD 20:10:01:19; Order Establishing Answer Deadline. On June 16, 2020, AT&T Mobility filed an Answer and Counterclaim. On July 2, 2020, Venture filed a Reply to Counterclaim. On July 31, 2020, the Parties filed a Stipulation and Motion for Adoption of Procedural Schedule. On August 7, 2020, the Commission issued an Order Granting Motion for Adoption of Procedural Schedule; Order Adopting Procedural Schedule; Order Requiring Prefiled Testimony.

On September 22, 2020, Venture filed its pre-filed testimony (Jandreau, Houdek). On October 22, 2020, AT&T Mobility filed its pre-filed testimony (Brown and Le). On November 23, 2020, Venture filed its pre-filed rebuttal testimony (Jandreau). On March 4, 2021, the Parties filed a Stipulation and Motion for Adoption of Revised Procedural Schedule. On March 18, 2021, the Commission issued an Order Granting Motion for Adoption of Revised Procedural Schedule; Order Adopting Revised Procedural Schedule.

On May 19, 2021, AT&T Mobility filed a Motion for Partial Summary Judgment, a Statement of Undisputed Material Facts, and Affidavit of William Van Camp, exhibits, and a Memorandum in Support of Motion. On June 21, 2021, Venture filed its Opposition to the Motion for Partial Summary Judgment, Affidavit of Fay Jandreau, Response to Statement of Undisputed Material Facts. On July 2, 2021, ATT&T Mobility filed its Reply in Support of its Motion for Partial Summary Judgment. On July 14, 2021, the Commission issued an Order Denying Motion for Partial Summary Judgment.

On November 5, 2021, Venture filed a Motion to Set Hearing Date. On November 24, 2021, the Commission issued an Order Denying Motion to Set Hearing Date; Order Denying Testimony by Electronic Means.

On November 8, 2022, Venture filed a Motion to Amend Complaint. On November 18, 2022, AT&T Mobility filed its Objection to the Motion to Amend Complaint and it filed a Motion to Dismiss and Affidavit of William Van Camp. On November 29, 2022, Commission staff filed its Response to Venture's Motion to Amend Complaint and AT&T Mobility's Motion to Dismiss. On December 15, 2022, Venture filed its Reply to Objection to Amend Complaint and Opposition to Motion to Dismiss and Affidavit of Darla Pollman Rogers. On December 27, 2022, the Commission issued an Order Denying Motion to Dismiss; Order Denying Motion to Amend Complaint.

The evidentiary hearing was held as scheduled, beginning on April 13, 2023, and ending on April 14, 2023. At the conclusion of the evidentiary hearing, a briefing schedule was set by the Commission. On May 22, 2023, Venture filed its Post-Hearing Brief. On June 12, 2023, Mobility filed its Post-Hearing Brief. On June 27, 2023, Venture filed its Reply to Mobility's Post-Hearing Brief.

On August 15, 2023, at its regularly scheduled meeting, the Commission took up the matter and heard final closing comments of the parties as to whether AT&T Mobility failed to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests at the rate set forth in Venture's price list? And whether AT&T Mobility should pay all unpaid interconnection charges and late payment charges thereon, pre-judgement and post-judgement interest on all unpaid balances, Venture's costs and expenses, and order other and further relief as the Commission deems just? And whether Venture improperly billed AT&T Mobility for DS1 services under its pricing catalog? And whether Venture should refund the amounts paid by AT&T Mobility, and whether Venture should pay all pre-judgement and post-judgement interest for all claim amounts, AT&T Mobility's costs and expenses including attorney's fees, and other and further relief as the Commission deems appropriate?

At the meeting, the Commission voted unanimously that, AT&T Mobility: (1) failed to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests at the rate set forth in Venture's price list; (2) should pay all unpaid interconnection charges and late payment charges thereon; (3) should pay pre-judgement and post-judgement interest on all unpaid balances; and (4) should not pay Venture's costs and expenses.

Further, the Commission voted unanimously that, Venture: (1) did not improperly bill AT&T Mobility for DS1 services under its pricing catalog; (2) should not refund the amounts paid by AT&T Mobility; (3) should not pay all pre-judgement and post-judgement interest for all claim amounts; and (4) should not pay AT&T Mobility's costs and expenses including attorney's fees.

The Commission has jurisdiction over this matter pursuant to SDCL 1-26, 49-13, 49-31, and ARSD Chapter 20:10:01. The Commission may rely upon any or all of these or other laws of this state in making its determination.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. AT&T ordered a number of SS7 trunks at the Digital Signal level 0 rate ("DS0") from Venture.
2. Without DS0 trunks, calls originated by Venture's customers and terminated by AT&T to its customers would be long distance calls.
3. The DS0 trunks only handle traffic originated by Venture's customers and terminated

- by AT&T to its customers.
4. AT&T ordered the DS0 trunks by submitting industry-standard Access Service Requests (ASRs) to Venture.
 5. For each ASR received by Venture, Venture provisioned, and AT&T tested and accepted, the number of DS0 trunk groups specified in each ASR.
 6. Venture billed AT&T for the DS0 trunks AT&T ordered pursuant to its local price catalog for provisioning of local services to carriers.
 7. At the time of AT&T's initial dispute, AT&T had ordered and was using and paying for 96 DS0 trunks.
 8. In August of 2019, AT&T began paying Venture less for the trunks.
 9. In August of 2020, AT&T ceased paying for the trunks.
 10. AT&T submitted disconnect orders to Venture via ASRs in June of 2022.
 11. Venture implemented AT&T's disconnection order in July of 2022.
 12. AT&T's unpaid invoices total \$252,489.60 plus interest.
 13. A strong history of continued ordering, utilizing, and paying for DS0 trunks without issue is present.
 14. In 2004, Venture and AT&T's predecessor entered into the ICA, which was filed with and approved by this Commission.
 15. The ICA contains terms, conditions and prices under which Venture and AT&T interconnect.
 16. The ICA does not authorize short payments or the refusal to pay amounts subject to dispute.
 17. Based upon Paragraph 5.0 of the ICA's Appendix A, the price of the DS0 trunks is in Venture's pricing catalog.
 18. Venture's pricing catalog includes monthly rates for "Mobile Cellular Digital Trunks" of \$98.50 per trunk and SS7 Signaling Charge of \$10 per trunk.
 19. In 2012, the parties amended the ICA ("Amendment"), which modified the ICA such that effective July 1, 2012, Non-Access Telecommunications Traffic exchanged between the parties shall be exchanged on a bill-and-keep basis.
 20. The Amendment did not affect the behavior of the parties and AT&T and/or its predecessor continued to utilize and pay for the DS0 trunks.
 21. The Commission had to opportunity to observe Mr. Jandreau testify to, and engage in, a highly fact-intensive and nuanced determination setting forth:
 - a. the interconnection between the parties and specifically, the role and necessity of the DS0 trunks at issue.
 - b. how the DS0 trunks were ordered, and how to interpret the ASRs that were used to order the DS0 trunks.
 - c. how the trunks were priced (monthly, not per-minute).
 22. The Commission found Mr. Jandreau's testimony to be persuasive after consideration of the above observations, along with others, in terms of an overall determination of the contract controlling the purchased DS0 trunks in dispute.
 23. Mr Le's testimony regarding the following items was not supported by facts in the record:
 - a. Venture is merely performing local switching and porting functions to connect the T1 point of presence in Venture's end office to Venture's own users.
 - b. The DS0 trunks are not necessary to accomplish local calling patterns for Venture-originated traffic to AT&T customers.
 - c. Bill-and-keep requires that all local traffic, regardless of whether it is originating or terminating in nature, is no longer compensable between carriers.
 - d. That Venture's rates for the DS0 trunks were "unjust, unreasonable, and

discriminatory” based upon a price comparison to other carriers in South Dakota.

- e. That AT&T did not submit the ASRs in question to Venture, but rather to SDN, and that the ASRs that Venture received from AT&T were courtesy copies.
24. After a fair opportunity to fully hear and conscientiously sort out and compare Mr. Jandreau’s testimony above, the Commission determined Mr. Le’s testimony about the pricing comparison offered by AT&T to support its claim that Venture’s prices are “unjust, unreasonable, and discriminatory,” was not supported by the evidence. Mr. Le admitted that he had not conducted a cost study of the comparison companies relied upon by AT&T; that he had not reviewed the underlying interconnection agreements between the comparison companies and AT&T; and that he was unaware of each comparison company’s relationship with SDN.
25. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated herein by reference as a Finding of Fact as if set forth in full herein.
26. To the extent that any of the Findings of Fact in this decision are determined to be Conclusions of Law or mixed findings of fact and conclusions of law, the same are incorporated herein by this reference as a Conclusion of Law as if set forth in full herein.

Based on the foregoing Findings of Fact and the entire record (3 years), the Commission hereby makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL §§ 1-26, 49-13, 49-31, and A.R.S.D. Chapter 20:10:01. The Commission may rely upon any or all of these or other laws of this state in making its determination.
2. The Commission concludes that as to the contracting, purchasing, billing, and total transacting between the parties:
 - a. The ICA is binding on the parties and respective successors of the parties.
 - b. AT&T ordered DS0 trunks from Venture.
 - c. Venture provided DS0 trunks ordered, which were tested and accepted.
 - d. AT&T breached the ICA by short-paying, and ultimately ceasing payment entirely, for the DS0 trunks.
 - e. AT&T damaged Venture in the amount of \$252,489.60 plus interest.
3. The Commission concludes that AT&T has the burden of proof regarding:
 - a. The rates for the DS0 trunks are controlled by Venture’s access service tariffs.
 - b. Venture’s billing was inconsistent with the ICA or applicable tariffs.
 - c. That Venture did not provide the services invoiced.
 - d. The rates for the DS0 trunks are controlled by the bill-and-keep provisions of the ICA.
 - e. That Venture’s pricing catalog rate for the DS0 trunks are “unjust, unreasonable, and discriminatory[.]”
 - f. That the provisions of §252(d) apply to the DS0 rates charged by Venture.
4. Upon trying the facts as observed and presented, the Commission concludes Venture’s sale and billing of the DS0s is consistent with the ICA and its amendment under the use of the ASR’s and price guide.
5. The Commission concludes AT&T failed to provide sufficient evidence or accepted alternatives to support its claim that the price guide’s prices were “unfair, unjust, and unreasonable.”

6. The Commission concludes that, based upon the Findings of Fact above, AT&T's Counterclaim should be denied.

It is therefore

ORDERED, that AT&T Mobility: (1) failed to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests at the rate set forth in Venture's price list; (2) should pay all unpaid interconnection charges and late payment charges thereon; (3) should pay pre-judgement and post-judgement interest on all unpaid balances; and (4) should not pay Venture's costs and expenses. It is further

ORDERED, that, Venture: (1) did not improperly bill AT&T Mobility for DS1 services under its pricing catalog; (2) should not refund the amounts paid by AT&T Mobility; (3) should not pay all pre-judgement and post-judgement interest for all claim amounts; and (4) should not pay AT&T Mobility's costs and expenses including attorney's fees.

NOTICE OF ENTRY

31st PLEASE TAKE NOTICE that this Final Decision was duly issued and entered on this 31st day of August 2023.

Dated at Pierre, South Dakota, this 31st day of August 2023.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically and mail.	
By:	<u>Adam deHueck</u>
Date:	<u>8/31/23</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Ziegen
KRISTIE ZIEGEN, Chairperson

Gary Hanson
GARY HANSON, Commissioner

Chi Nelson
CHRIS NELSON, Commissioner