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

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IN THE MATTER OF THE COMPLAINT  
OF VENTURE COMMUNICATIONS  
COOPERATIVE AGAINST NEW  
CINGULAR WIRELESS PCS, LLC DBA  
AT&T MOBILITY

**VENTURE PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

**Docket No. CT20-001**

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On May 13, 2020, Venture Communications Cooperative (Venture) filed with the South Dakota Public Utilities Commission (Commission) a Complaint against New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) for failure to pay for local interconnection facilities ordered by AT&T in Access Service Requests (ASRs) 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 and established an answer deadline of June 2, 2020. On May 28, 2020, Venture, AT&T, and Commission staff (parties) filed a Stipulation and Request for Waiver of A.R.S.D. 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 A.R.S.D. 20:10:01:19; Order Establishing Answer Deadline. On June 16, 2020, AT&T 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 and Houdek). On October 22, 2020, AT&T 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 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, AT&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 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'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.

On April 13 and 14, 2023, the Evidentiary Hearing was held as scheduled. At the hearing, the parties agreed to a procedural schedule for post-hearing briefing. On May 22, 2023, Venture filed a Post-Hearing Brief. On June 12, 2023, AT&T filed a Post-Hearing Brief. On June 27, 2023, Venture filed a Post-Hearing Reply Brief.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Decision:

### **FINDINGS OF FACT**

#### I. The Dispute

1. AT&T and Venture interconnect their networks at Venture's end-office switches in Sisseton, Highmore, and Britton.

2. In order to transport its traffic to and from its own switch in Omaha, Nebraska and the points of interconnection between the parties (Venture's end-office switches in Sisseton, Highmore, and Britton), AT&T ordered a trunk at the Digital Signal level 1 rate ("DS1") from South Dakota Network ("SDN").

3. In order to obtain local calling for calls originated by Venture's customers to AT&T's customers, AT&T ordered a number of SS7 trunks at the Digital Signal level 0 rate ("DS0") from Venture.

4. Absent the DS0 trunks, calls originated by Venture's customers and terminated by AT&T to its customers would be long distance calls.

5. The DS0 trunks only handle traffic originated by Venture's customers and terminated by AT&T to its customers.

6. AT&T ordered the DS0 trunks by submitting industry-standard Access Service Requests (ASRs) to Venture.

7. For each ASR received by Venture, Venture provisioned, and AT&T tested and accepted, the number of DS0 trunk groups specified in each ASR.

8. Venture billed AT&T for the DS0 trunks AT&T ordered pursuant to its local price catalog for provisioning of local services to carriers, as required in the Reciprocal Interconnection Transport and Termination Agreement (“ICA”) between the parties.

9. At the time of AT&T’s initial dispute (May of 2016), AT&T had ordered and was using and paying for 96 DS0 trunks.

10. In August of 2019, AT&T began short-paying Venture for the 96 DS0 trunks. In August of 2020, AT&T ceased payment entirely.

11. AT&T submitted disconnect orders to Venture via ASRs in June of 2022, and Venture implemented AT&T’s disconnection order in July of 2022.

12. AT&T’s unpaid invoices total \$252,489.60 plus interest.

13. At all times prior to the dispute, AT&T and its predecessors have ordered, utilized, and paid for DS0 trunk groups without issue.

## II. The Interconnection Agreement

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 sets forth the terms, conditions and prices under which Venture and AT&T interconnect their respective networks, either directly or indirectly via the network of a third party provider.

16. The ICA does not authorize a party to short payment or non-pay disputed amounts.

17. The DS0 trunks ordered by AT&T are facilities that are described in Section 3.1 of the ICA.

18. The pricing of facilities described in Section 3.1 of the ICA is addressed in Paragraph 5.0 of Appendix A of the ICA.

19. Based upon Paragraph 5.0 of the ICA’s Appendix A, the price of the DS0 trunks is the lowest of: Venture’s interstate tariff; Venture’s intrastate tariff; or Venture’s pricing catalog.

20. Venture’s interstate tariff is the NECA tariff, and its intrastate tariff is the LECA tariff. Those tariffs do not include any pricing for local trunks at DS0 speeds.

21. Venture's pricing catalog is the only source of pricing for DS0s. It includes monthly rates for "Mobile Cellular Digital Trunks" of \$98.50 per trunk and SS7 Signaling Charge of \$10 per trunk. Accordingly, Venture correctly charged AT&T the applicable prices for DS0s and SS7 Signaling charges set forth in its pricing catalog.

22. In 2012, the parties entered into an amendment to 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.

23. The Amendment provides that the term "Non-Access Telecommunications Traffic" has the meaning set forth in 47 CFR §51.701(b)(2). That section defines Non-Access Telecommunications Traffic as "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area."

24. The Amendment defines "bill-and-keep" to mean that "the originating Party has no obligation to pay terminating charges to the terminating Party" and that, for transport and termination of traffic, "the per MOU rate for LEC, as set forth in "Appendix A" of the [ICA], shall be \$0.00."

25. The Amendment does not apply to the traffic subject to this dispute.

26. Due to the inapplicability of the Amendment to the traffic subject to this dispute, after execution of the Amendment, AT&T and/or its predecessor continued to utilize and pay for the DS0 trunks then in service at the time.

### III. The Hearing

27. An evidentiary hearing was held April 13-14, 2023.

28. Mr. Fay Jandreau testified on behalf of Venture. Mr. Jandreau is the General Manager of Venture and has over thirty years of experience in telecommunications operations.

29. Mr. Dan Le testified on behalf of AT&T. Mr. Le is the Lead Carrier Relations Manager of AT&T Services, Inc.'s Global Access Management division. His expertise is in the management of AT&T entities' relationships with other carriers and is chiefly responsible for the negotiation and management of interconnection agreements and other traffic exchanges.

30. During his testimony, Mr. Jandreau explained:

- a. the history of interconnection and traffic exchange between AT&T and Venture under the ICA.
- b. the interconnection between the parties and specifically, the role and necessity of the DS0 trunks at issue.
- c. how the DS0 trunks were ordered, and how to interpret the ASRs that were used to order the DS0 trunks.

- d. how the trunks were priced (monthly, not per-minute).
31. During his testimony, Mr. Le mistakenly alleged that:
- 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.

32. Mr. Le was unable to answer many questions about the pricing comparison offered by AT&T to support its claim that Venture's prices are "unjust, unreasonable, and discriminatory." 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.

33. 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.

34. 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 in this proceeding, 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, under the common law of contracts:
  - a. The ICA is binding on the parties and respective successors of the parties.
  - b. AT&T ordered the DS0 trunks from Venture,
  - c. Venture provided the DS0 trunks ordered by AT&T, and AT&T tested and accepted the same.
  - 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 the parties established a course of conduct through the repeated ordering, testing, accepting, using and paying the pricing catalog rate for DS0 trunks by AT&T and its predecessor for a significant portion of the business relationship between the parties.

4. The Commission concludes that AT&T has the burden of proof with regard to its allegations that:

- 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, and
- g. For the Counterclaim that AT&T has asserted in this proceeding.

5. The Commission concludes that AT&T has failed to meet its burden of proof with regard to the above allegations.

6. The Commission concludes that the ICA controls the rates for the DS0 trunks under Section 3.1 and Paragraph 5.0 of Appendix A.

7. The Commission concludes that Venture's billing is consistent with the ICA, and that Venture's access tariffs are not applicable.

8. The Commission concludes that Venture provided a local interconnection service to AT&T beyond simple interconnection, as it allowed for local dialing patterns ordered by AT&T for Venture-originated traffic to AT&T's customers.

9. The Commission concludes that the bill-and-keep provisions of the amendment to the ICA do not apply to the DS0 trunks because, per the Amendment, bill-and-keep only applies to the obligation to pay terminating charges to the terminating party, and then only per-minute charges. The Commission finds that the charges for the DS0 trunks are neither terminating charges nor per-minute charges.

10. The Commission concludes that the Amendment to the ICA specifically sets forth the compensation arrangement for the DS0 trunks and, therefore, the application of bill-and-keep as a default compensation mechanism, as authorized by the FCC, does not apply to the parties' exchange of traffic.

11. The Commission concludes that the rates charged by Venture for the DS0 trunks did not violate FCC cost principles because the standards of 47 U.S.C. 252(d) do not apply to voluntarily negotiated interconnection agreements.

12. The Commission concludes that the rates charged by Venture for the DS0 trunks were not "unfair, unjust, and unreasonable" because those rates are provided for in an interconnection agreement that has already been reviewed and approved by this Commission.

13. The Commission further concludes the rates charged by Venture for the DS0 trunks were not "unfair, unjust, and unreasonable" because AT&T failed to provide sufficient evidence to support its claim.

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

ORDERED, that Venture's complaint and its prayer for relief contained therein, including damages in the amount of \$252,489.60 as proven at hearing, pre- and post-judgment interest thereon, Venture's costs and expenses, and such other and further relief as the Commission deems just, against AT&T is GRANTED;

ORDERED, that AT&T's counterclaim against Venture is DENIED.