BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT OF VENTURE COMMUNICATIONS

COOPERATIVE AGAINST AT&T MOBILITY

SD PUC DOCKET CT20-001

PRE-FILED DIRECT TESTIMONY OF DAN LE

ON BEHALF OF AT&T MOBILITY

October 22, 2020

EXHIBIT
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AT&T
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Q. Please state your name, title, employer and business address for the record.

A. Dan Le, Lead Carrier Relations Manager, Global Access Management. I am employed by AT&T Services, Inc. and my business address is One AT&T Way, Bedminster, N.J., 07921-2693.

Q. Please describe your education and work experience.

I joined AT&T in 1999 and have held a variety of positions within the Global Access Management team during that time. I have been in my current position since the beginning of 2020. Prior to joining AT&T, I received a BA-Psychology from Albright College (1993) and a JD from Widener University-Wilmington (1996)

Q. Please described your role as Lead Carrier Relations Manager.

A. In my role as a Lead Carrier Relations Manager, I am responsible for the relationship between AT&T entities (i.e., AT&T Mobility and AT&T's Competitive Local Exchange Carrier entities) with other unaffiliated carriers. Additionally, I am responsible for the negotiation and management of Interconnection Agreements ("ICA") and other traffic exchange agreements on behalf of these AT&T entities with unaffiliated carriers.

Q. What is the purpose of your testimony.

A. My testimony is intended to provide background on the exchange of local traffic between telecommunications carriers and address the terms and application of the ICA between AT&T Mobility and Venture.

Q. Can you describe the purpose of an Interconnection Agreement and the nature of the Parties' ICA?

A. Yes. As I'm sure you know, Congress passed the Telecommunications Act of 1996 to fully open competition in the local exchange market. Section 251(a) of the Act requires all telecommunication carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . ." Section 251(b) sets forth a number of obligations assigned to all carriers to ensure the ability of consumers to choose their local exchange carrier, including number portability, dialing parity and reciprocal compensation.

In order to ensure that the Act would truly lead to consumer choice, Section 251(c) imposed additional requirements on Incumbent Local Exchange Carriers (ILECs), including the duty to negotiate the terms and conditions of agreements to fulfill the obligations under Section 251(b), and provide interconnection between the ILEC and a requesting carrier for the "transmission and routing of telephone exchange service [local calls] and exchange access [long distance calls]. . . "

Consistent with those obligations, in 2004 AT&T Mobility's predecessor and Venture executed an ICA, approved by this Commission, which established the terms, conditions and reciprocal compensation for the exchange of local traffic between the two carriers.[1]

[1] A copy of the Parties ICA was attached to Exhibit 2 to Mr. Jandreau's pre-filed testimony.

In June 2016, AT&T Mobility and Venture amended the ICA to conform to the FCC's *Transformation Order*[2] and *Order on Reconsideration*[3] in which the FCC adopted default 'bill-and-keep' compensation for the exchange of non-access (i.e. local) traffic between LECs and CRMS providers. Under the terms of the ICA Amendment, Venture and AT&T Mobility agreed that as of July 1, 2012, all Non-Access telecommunications traffic "shall be exchanged on a bill-and-keep basis." I have attached the 2016 Amendment, as Exhibit A to my testimony.

Q. Please describe terms of the Parties' ICA and how they operate in the exchange of local traffic between AT&T Mobility and Venture?

A. The Parties' ICA sets forth a variety of configuration options for the exchange of traffic. For the majority of local traffic that AT&T Mobility exchanges with Venture under the ICA, AT&T relies on an arrangement under §4.3 "Mobility to Land- Indirectly Connected via Third Party Provider," whereby AT&T Mobility sends its end users' originating calls to South Dakota Network ("SDN") and SDN delivers the traffic to Venture for termination to its end users. Under this arrangement, AT&T Mobility compensates SDN to act as its agent for the delivery of traffic to Venture.

However, as Ms. Brown described in her testimony, in order to allow Venture's end users to make local calls to AT&T Mobility's wireless end users using seven-digit dialing,

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[2] ***Connect America Fund et al.***, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order or USF/ICC Transformation Further Notice), aff'd, In re FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) (In re FCC 11-161), cert. denied, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015).

[3] ***Connect America Fund et al.***, Order on Reconsideration, adopted December 23, 2011.

in 2018 AT&T established three new interconnection facilities between AT&T Mobility's MTSO and Venture's three end offices. AT&T Mobility purchases DS1 dedicated transport facilities between its own network and the Venture end offices from SDN and compensates SDN for those facilities. This type of arrangement is reflected in the terms of §3.3 of the ICA that describes "Additional Interconnection Methods Available to the CRMS Provider" which specifically allows AT&T Mobility to "purchase an entrance facility and transport from a Third Party Provider. . . for the delivery of such traffic." See §3.3.1

Q. Does the ICA set forth the terms of reciprocal compensation between AT&T Mobility and Venture?

A. Yes. While Section 3 and 4 of the ICA cover the interconnection facilities arrangement, the compensation for the actual exchange of local traffic, including the trunk port where the DS1 provided by SDN connects to the Venture end office switch and end office switching functionalities, are covered by Section 5.0 "Transport and Termination Compensation." Section 5.1 states:

> *Rates - The CRMS Provider and the Telephone Company shall reciprocally and symmetrically compensate one another for Local Traffic terminated on either Party's network.* ***The rates at which the Parties shall compensate each other for the Transport and Termination of Traffic are set forth in Appendix A hereto.*** *(emphasis added)*

Despite the terms of the ICA, Venture has historically sought to bill AT&T Mobility under the provisions of Section 3.1 of the ICA, when the services which Venture provides are covered by Section 5 of the ICA.

Q. Can you explain why this is an important distinction?

A. Yes. In fact, when AT&T Mobility's claim was originally initiated by TEOCO, AT&T was relying on Venture's billing practice of billing for 24 DS0 trunks as the framework for the dispute. Using the billing as a starting point, AT&T Mobility challenged Venture's characterization of the facilities AT&T Mobility ordered through Access Service Requests ("ASRs") as orders for individual DS0 trunks vs. billing at a DS1 level. However, since the initiation of the claim and the beginning of this proceeding, AT&T Mobility has revisited the specific terms of the ICA, and determined that the actual facilities covered by the ASRs referenced in Mr. Jandreau's testimony are the trunks between AT&T Mobility's MTSO and Venture's switch, which are provided by SDN and for which AT&T compensates SDN. [4]

Instead, the service that Venture is providing is covered by Section 5, Transport and Termination.

> *5.1 Rates – The CRMS Provider [AT&T Mobility] and the Telephone Company [Venture] shall reciprocally and symmetrically compensate one another for Local Traffic terminated on either Party's network. The rates at which the Parties shall compensate each other for the Transport and Termination of Traffic are set forth in Appendix A.*
>
> *5.1.2 The rates applicable to Local Traffic are set forth in Appendix A.*

Appendix A of the 2004 ICA set forth specific rates for both mobile-to-land traffic and land-to-mobile traffic (the type of traffic at issue in this dispute). Subsequently, the 2016

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[4] See Venture Reply to Counterclaim, reply to ¶4 "Upon information and belief, Venture admits that AT&T Mobility placed orders from SDN for transport and from Venture to establish interconnection between the networks of AT&T Mobility and Venture for the exchange of local traffic."

ICA Amendment made clear that neither party was entitled to compensation for transport and termination of "Non-access telecommunications Traffic."

Therefore, the nature of transport and termination of local traffic Venture provides to AT&T Mobility is the local switching and transport of calls between the Venture's end users' landlines and the hand off to the AT&T Mobility's interconnection facility provided by SDN. In that respect, although Venture does provide the switch port for the interconnection facility, the switch port, whether at the DS1 level (as AT&T has suggested) or at the DSO level (as advocated by Venture), is irrelevant because the 'port' is part of the end office switching and transport services that the FCC requires (and which the Parties' ICA confirms) be treated as 'bill and keep.'

Q. **In the testimony of Mr. Jandreau, Venture claims it is entitled to bill AT&T Mobility for services provided pursuant to its Price Catalog. Why does AT&T Mobility disagree with this contention?**

A. As I mentioned before, AT&T Mobility's original claim focused on Venture's billing for services. At that time, AT&T Mobility argued that Venture had improperly billed for interconnection 'trunks' since Section 5.0 of Appendix A states:

> *5.0 FACILITY RATE*
>
> *To the extent CRMS Provider requires facilities referenced in 3.1, such facilities will be made available and the price will be based upon the* ***lowest*** *Telephone Company interstate or intrastate rate published in the Telephone Company's tariff or pricing catalog. (emphasis added)*

However, as noted by Ms. Brown in her testimony, prior to the filing of this complaint, Venture had rejected that the services provided were pursuant to the ICA, instead insisting that it was providing service pursuant to its General Exchange Tariff that appeared to have been filed with this Commission in 2004, but is no longer on file. Venture now claims that its 'General Exchange Tariff' is the "Price Catalog" (see Jandreau testimony, Footnote 9) and asserts that the rates set forth in Part V, Original Sheet 8, referenced as "H. TRUNK," which sets the monthly rate for "Mobile Cellular Digital Trunks" at $98.50 per DS0, and requiring Digital Trunks have DS-1 transport rate elements added.

In fact, Venture's reliance on its General Exchange Tariff or Price Catalog makes it clear that the services described in that document are not the services or functions Venture provides for the exchange for local traffic pursuant to the Parties' ICA. Venture's Price Catalog defines a trunk line as "[a] circuit over which customers' messages are sent between two central offices or between the central office and a private branch exchange system." (See Exhibit B – Definitions of General Exchange Tariff) As noted before, Venture does not claim that it provides the facility between AT&T's MTSO and its own end office switches. Instead, the services it provides are for the transport of a call between its own end user and its end office switch, and the hand off to the interconnection facility at the end office trunk port.[5]

Q. Are there other factors that point to the fact that Venture's charges are improper?

A. Yes. First, AT&T Mobility has identified at least three South Dakota ILECs with similar circuit configurations. In each case, AT&T Mobility has arranged for meet point DS1

[5] It is also notable that Venture has no rate for an end off switch port in either its interstate (NECA) or intrastate (LECA) tariffs or its Price Catalog.

facilities between its own network to the ILEC's end offices from SDN and pays SDN for those facilities None of these ILECs bill for the DS1 terminations, since the service they each provide, like the service Venture provides under the terms of our ICA, are compensated pursuant to the parties' reciprocal compensation arrangements.

Second, as a practical matter, the DS1 facilities that AT&T Mobility maintains to the Venture end offices serve very little traffic. A recent review of the volume of traffic between Venture end users and AT&T Mobility suggest that on average these facilities handle less than twenty (20) minutes per month. While under other conditions, accepted principles of network engineering would suggest that other arrangements be made to accommodate such small traffic volumes, AT&T Mobility maintains these facilities in order to accommodate seven (7) digit local dialing by Venture's end users, rather than use an alternative configuration which would require Venture's end users to use ten (10) digit dialing. Therefore, even without Venture's unjustified billing, AT&T Mobility costs for the Venture end user calls is approximately $128.99 per minute of use. With Venture's additional billing of $2,754.00 per DS1 trunk is added, the per minute of use increases to $542.09 per minute of use! While AT&T Mobility understands the requirement for these interconnection facilities, and intends to maintain those facilities, Venture's billing not only violates the FCC's requirement that compensation for transport and termination to be 'bill-and-keep', it clearly imposes an unjust and unreasonable cost on AT&T Mobility.

Q. Does that conclude your testimony?

A. Yes.

EXHIBIT A

Amendment to the Reciprocal Interconnection, Transport and Termination Agreement between New Cingular Wireless PCS, LLC, and its Commercial Mobile Radio Service operating affiliates, d/b/a AT&T Mobility and Venture Communications Cooperative

This is an Amendment ("Amendment") to the Reciprocal Interconnection, Transport and Termination Agreement between New Cingular Wireless PCS, LLC, a Delaware limited liability company, and its Commercial Mobile Radio Service ("CMRS") operating affiliates, d/b/a AT&T Mobility (hereafter "AT&T Mobility"), and Venture Communications Cooperative ("LEC"), a rural rate-of-return local exchange carrier, jointly the "Parties".

RECITALS

WHEREAS, the Parties, or their predecessors in interest, previously entered into a Reciprocal Interconnection, Transport and Termination Agreement (the "Agreement"), pursuant to 47 U.S.C. §§ 251/252; and

WHEREAS, the Federal Communications Commission ("FCC"), in a Report and Order released November 18, 2011 (the "November 18 Order"), has provided that "Non-Access Telecommunications Traffic" exchanged between LECs and CMRS providers, that originates and terminates within the same Major Trading Area, should be exchanged pursuant to a bill-and-keep arrangement; and

WHEREAS, the FCC, in an Order on Reconsideration released December 23, 2011, determined that the "default bill-and-keep compensation methodology for LEC-CMRS non-access traffic" should be effective as of July 1, 2012; and

WHEREAS, LEC disputes the lawfulness of the FCC's bill-and-keep requirement, the lawfulness of the requirement is on appeal, and the appeal will not be concluded by July 1, 2012; and

WHEREAS, pursuant to certain terms in the existing Agreement, the Parties have agreed to modify, in writing, the affected terms and conditions of the Agreement to bring them into compliance with the FCC's recent orders and newly adopted rules.

AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

1. Effective July 1, 2012, Non-Access Telecommunications Traffic exchanged between the Parties under the existing Agreement pursuant to 47 U.S.C. § 251(b)(5) shall be exchanged on a bill-and-keep basis.

2. "Non-Access Telecommunication Traffic" shall have the meaning set forth in 47 CFR § 51.701(b)(2).

3. Bill-and-keep, for purposes of this Amendment and the existing Agreement between the Parties, shall mean that the originating Party has no obligation to pay terminating charges to the terminating Party. Accordingly, the per MOU rate for LEC, as set forth in "Appendix A" of the existing Agreement between the parties, shall be $0.00.

4. Notwithstanding anything in the existing Agreement to the contrary, the Parties agree that this bill-and-keep arrangement for LEC-CMRS Non-Access Telecommunications Traffic does not apply to or affect the rates applicable to "Access" telecommunications traffic – traffic exchanged between telecommunications service providers that is "interstate or intrastate exchange access".

5. This Amendment to the Agreement does not, and is not intended to, affect any agreements the Parties now have or any other agreements the Parties now have or may in the future have with any intermediate carrier for the transiting and transport of telecommunications traffic, except to the extent any such agreements may require modification in order to comply with 47 CFR § 51.709(c) and related provisions in the November 18 Order, referenced in Paragraphs 7 and 8 herein.

6. The Parties further agree that the bill-and-keep arrangement hereby established shall, in all respects, be subject to the provisions of any future stay, revision, reconsideration, change or modification of the related FCC orders, as subsequently issued by the FCC or a court of competent jurisdiction. Any future stay or reversal of the FCC's bill-and-keep requirement shall be effective immediately upon release of the order, and shall not be subject to the provisions of the Agreement requiring negotiation of a change of law. Further, immediately upon issuance of a stay or reversal of the FCC's bill and keep requirement, the reciprocal compensation rate in the Agreement shall be reinstated on terms consistent with the language of the related court order(s).

7. The Parties may, for purposes of exchanging LEC-CMRS traffic, interconnect as provided for under the existing Agreement, subject to the provisions of 47 CFR § 51.709(c), and related provisions in the November 18 Order, which establish an "interim default rule" for the allocation of transport costs related to non-access traffic exchanged between CMRS providers and rural, rate of return regulated LECs.

8. The Parties agree that any future requested modifications to these interconnections shall not impose transport responsibilities on LEC beyond what is permitted under FCC rules and specifically, the provisions of 47 CFR § 51.709(c), and related provisions in the November 18 Order, which establish an "interim default rule" for the allocation of transport costs related to non-access traffic exchanged between CMRS providers and rural, rate of return regulated LECs.

9. The Parties further acknowledge and agree that pursuant to the existing Agreement, specifically Section 7.2.3, that the Percent InterMTA Use (PIU) factor used to determine

the estimated portion of InterMTA traffic delivered by CMRS Provider for termination by LEC may be periodically adjusted. Accordingly, consistent with those terms, the current PIU factor may be adjusted within three months after the date of execution of the Amendment and every six months thereafter, in a manner consistent with the further related terms of the Agreement.

10. By this Amendment, neither Party waives any rights it may have under the Federal Act or rules of the FCC, under state statute, or pursuant to rules of the South Dakota Public Utilities Commission. Such rights include AT&T Mobility's right to request a review of the rural telephone company exemption provided for under 47 U.S.C. § 251(f) and LEC's right to seek to maintain that exemption and LEC's right to petition, pursuant to 47 U.S.C. § 251(f)(2), for a suspension or modification from any of the local exchange carrier requirements contained in 47 U.S.C. §§ 251(b) and 251(c), including the right to seek to suspend or modify the bill and keep provisions of the November 18 Order and related rules, at any time notwithstanding this Amendment.

11. This Amendment shall remain effective as long as the Agreement remains effective between the Parties.

12. The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented without the written consent thereto by both Parties' authorized representatives.

13. Except as expressly set forth herein, the terms and conditions of the Agreement shall remain in full force and effect without change.

The Parties, intending to be legally bound, have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

New Cingular Wireless PCS, LLC, And its Commercial Mobile Radio Service Operating affiliates, d/b/a ATT&T Mobility	Venture Communications Cooperative
By: Sheila Pedersen (Name)	By: R W Houdek Randy Houdek
Title: Lead Carrier Relations Mgr	Title: GM General Manager
Date: 6/19/2012	Date: 6/25/12