

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT)
OF VENTURE COMMUNICATIONS)
COOPERATIVE AGAINST NEW CINGULAR)
WIRELESS PCS, LLC D/B/A/ AT&T MOBILITY)

DOCKET NO. CT20-001

VENTURE COMMUNICATIONS COOPERATIVE'S REPLY TO COUNTERCLAIM

COMES NOW Venture Communications Cooperative, Inc. ("Venture") by and through its attorneys of record, Riter Rogers, LLP, Pierre, South Dakota and hereby submits this Reply to the Counterclaim asserted by New Cingular Wireless PCS, LLC d/b/a/ AT&T Mobility ("AT&T Mobility") in its Answer filed in response to Venture's Complaint against AT&T Mobility and its affiliates, partners, and/or subsidiaries for failing to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests ("ASRs") at the rates set forth in Venture's pricing catalog.

REPLY TO COUNTERCLAIM

For its Reply to AT&T Mobility's Counterclaim, Venture states as follows:¹

1. Venture is an incumbent local exchange carrier ("ILEC") that provides various telecommunications services, including, but not limited to local and long distance services.

REPLY: Venture admits the allegations in Paragraph 1.

2. New Cingular Wireless PCS, LLC is a Delaware Limited Liability Company, d/b/a AT&T Mobility, and that it and its affiliates are Commercial Mobile Radio Service ("CMRS") providers that offer wireless telecommunications services.

REPLY: Upon information and belief, Venture admits the allegations in Paragraph 2.²

¹ Venture denies any allegation that is not specifically admitted.

² In accordance with the affirmative allegations contained in AT&T Mobility's Answer to Paragraph 2 of Venture's Complaint, Venture admits Paragraph 2 of AT&T Mobility's Counterclaim and has substituted New Cingular Wireless PSC, LLC d/b/a AT&T Mobility as the party of record.

3. In January of 2004, WWC License L.L.C., the predecessor in interest to AT&T Mobility, entered into a Reciprocal Interconnection Transport and Termination Agreement ("the Agreement") with Venture. The Agreement was approved by the SD PUC by Order dated April 5, 2004.

REPLY: Venture admits the allegations in Paragraph 3.

4. In order to establish an interconnection between the network of AT&T Mobility and Venture, AT&T Mobility placed orders from CenturyLink, SDN and Venture for dedicated facilities to be established between its MTSO and the tandem/end offices of Venture. AT&T [Mobility] placed the orders with Venture for four (4) DS1 facilities pursuant to Venture's interstate (two (2) DS1s) and intrastate tariffs (two (2) DS1s) via Access Services Requests ("ASRs"), the standard industry method for ordering switched access facilities. For example, on the remarks section of the ASR PON identification listing NEOM0163721NEW, AT&T Mobility requested that a new "TG" or Trunk Group, be established. The Trunk Group was to consist of a DS1 facility with twenty-four (24) channels, to be billed and connected at the DS1 level. The ASRs did not request or provide that the interconnection facility be broken down further in to twenty-four separate channels at the DS0 level.

REPLY: 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. Venture has insufficient knowledge of orders placed by AT&T Mobility from CenturyLink to admit or deny the same, and places AT&T Mobility on proof thereof, to the extent it is relevant. Venture denies that AT&T Mobility placed orders with Venture for four DS1 facilities pursuant to Venture's interstate and intrastate tariffs. Venture admits that ASRs are the standard industry method for ordering switched access facilities from another carrier, but denies that AT&T Mobility ordered switched access facilities from Venture, pursuant to the ASRs. Venture admits that AT&T Mobility requested that a new trunk group be established, but denies the balance of Paragraph 4. Venture affirmatively states that AT&T Mobility placed orders with Venture for four trunk groups to interconnect the companies for the exchange of local traffic. Each trunk group consists of 24 DS0 trunks utilizing SS7, for a total of 96 trunks. The trunk groups are necessary to enable end user customers to dial AT&T

Mobility local numbers without dialing a 1 before the telephone number and to obtain local calling rates instead of being assessed for a long distance call. Venture provided the same pursuant to its local pricing catalog for interconnection facilities, in accordance with the Agreement. Venture affirmatively states that ASRs are used to order local facilities.

5. Pursuant to those ASRs, the interconnection facilities necessary to exchange local traffic between AT&T Mobility and Venture were established.

REPLY: Venture admits that AT&T Mobility, via ASRs, ordered interconnection facilities to enable the exchange of local traffic between AT&T Mobility and Venture, but Venture denies AT&T Mobility's interpretation of the ASRs. Venture also affirmatively alleges that the ASRs speak for themselves.

6. In early 2018 AT&T Mobility's agent, TEOCO, discovered in the course of a regular audit of Venture's billing for interconnection facilities, that instead of billing AT&T Mobility for DS1 switched access facilities ordered pursuant to Venture's interstate and intrastate tariffs, Venture was billing for services that were neither ordered or represented the actual services being provided to AT&T Mobility. As a result, in May 2018, TEOCO filed Claim No. CCCNG007472 on behalf of AT&T Mobility stating that Venture was improperly billing for the DS1 circuits it was providing because its billing was not consistent with the terms of Venture's access service tariffs.

REPLY: Venture denies the allegations contained in Paragraph 6. Venture affirmatively alleges and affirms that the services ordered by AT&T Mobility and provided and billed by Venture were for *local trunk groups for the exchange of local traffic*, not *switched access facilities*. Venture also affirmatively states that local trunk groups are properly billed pursuant to the Venture pricing catalog, not its switched access tariffs.

7. Over the course of the next year, AT&T Mobility and its agent attempted on numerous occasions to engage in dialogue with Venture regarding this billing dispute, and only after Venture refused to negotiate this issue further did AT&T Mobility begin withholding payment in August of 2019.

REPLY: Venture denies the allegations contained in Paragraph 7. Venture affirmatively states that it engaged in correspondence/dialogue in response to AT&T Mobility's agent's claims for

well over one year, without any results. TEOCO failed to even respond to Venture's offers to set up a call between Venture and TEOCO. Ultimately, due to TEOCO's lack of response, Venture denied TEOCO's claims. Venture further affirmatively states that AT&T Mobility has no legal basis to short pay Venture's bills.

8. Venture's billing is inconsistent with the terms of the Agreement between the Parties. Paragraph 5 of Appendix A to the Agreement, sets forth the terms for determining the appropriate rate for the interconnection facilities to be provided by Venture:

FACILITY RATE

To the extent CMRS 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*).

REPLY: Venture denies that its billing is inconsistent with the terms of the Agreement between the Parties and affirmatively states that it is billing in accordance with the terms of the Agreement. Venture agrees that absent the emphasis, AT&T Mobility has accurately quoted Paragraph 5 of Appendix A to the Agreement. Venture places the emphasis on the words *or pricing catalog* within said paragraph. Venture affirmatively states that there is no pricing for the establishment of a local trunk group in the LECA or NECA tariffs, as this is a "local" service that Venture accurately priced from its local pricing catalog, as authorized in the Agreement.

9. The tariff applicable to the intrastate service Venture provides is the LECA intrastate tariff. That tariff mirrors the NECA 5 interstate tariff, which allocates the cost of the switch port provided under these circumstances to other rate elements and does not have a separate charge for the DS1 switched port function/facility that AT&T Mobility order[ed] from Venture. Since there are no applicable rate elements in the applicable tariff, Venture is improperly billing AT&T Mobility.

REPLY: Venture denies the allegations contained in Paragraph 9. Venture denies that the service AT&T Mobility ordered from Venture was a DS1 switched port function/facility. Venture affirmatively states that AT&T Mobility ordered local trunk group facilities, not switched access

facilities, and that the LECA and NECA tariffs do not contain local trunk group facilities. Accordingly, the pricing catalog rather than tariffs establishes the appropriate price for local trunk group facilities.

10. Instead of complying with the terms of the Agreement, Venture has indicated that it chose to bill AT&T Mobility pursuant to its pricing catalog titled “Telephone Tariff,” in spite of its designation, the pricing catalog is not a tariff, and is not filed with the SD PUC.

REPLY: Venture denies the allegations contained in Paragraph 10 of the Counterclaim. Venture affirmatively states that it is complying with the terms of the Agreement, which allows for billing pursuant to the Telephone Company’s pricing catalog,³ not just interstate or intrastate tariffs. (*See* Venture’s Reply to Paragraph 8 of the Counterclaim). Venture denies that it has made a claim that the pricing catalog is a tariff. AT&T fails to provide any authority that the pricing catalog referenced in the Agreement must be filed with the SD PUC.

11. By improperly applying its pricing catalog, Venture billed AT&T Mobility, until August 2019, AT&T Mobility remitted to Venture, amounts far in excess of the appropriate intrastate rates for the DS1 facilities.

REPLY: For all of the reasons previously articulated in this Reply and in Venture’s Complaint, Venture categorically denies the allegations contained in Paragraph 11 of the Counterclaim.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Venture respectfully requests that AT&T Mobility’s Counterclaim be dismissed, with prejudice, and that AT&T Mobility recover nothing thereunder. Venture further prays for such other and further relief as the Commission deems appropriate.

³ Venture’s pricing catalog for local services is titled “Telephone Tariff,” because at one time it was filed with the SD PUC.

Dated this 2nd day of July, 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing in the above-entitled action was delivered by electronic mail this 2nd day of July, 2020, to the following:

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