

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

<b>IN THE MATTER OF THE COMPLAINT )</b>	
<b>OF VENTURE COMMUNICATIONS )</b>	
<b>COOPERATIVE AGAINST NEW )</b>	<b>STAFF’S RESPONSE TO</b>
<b>CINGULAR WIRELESS PCS, LLC DBA )</b>	<b>VENTURE COMMUNICATIONS</b>
<b>AT&amp;T MOBILITY )</b>	<b>COOPERATIVE’S MOTION TO</b>
<b>)</b>	<b>AMEND COMPLAINT AND</b>
<b>)</b>	<b>AT&amp;T MOBILITY’S MOTION</b>
<b>)</b>	<b>TO DISMISS</b>

COMES NOW, Staff of the South Dakota Public Utilities Commission (Staff) and hereby files this Response to Venture Communications Cooperative’s Motion to Amend Complaint and to AT&T Mobility’s Motion to Dismiss.

**BACKGROUND**

This Docket was filed on May 13, 2020, by Venture Communications Cooperative (Venture) against New Cingular Wireless PCS, LLC dba AT&T Mobility (Mobility). In the simplest form, the original complaint involved a billing and payment dispute. In the original complaint, Venture alleged Mobility failed to pay interconnection charges, ordered by Mobility and billed by Venture, and requested the Commission issue a judgement against Mobility and order Mobility to pay for unpaid interconnection charges, late payment charges, pre and post judgement interest, Venture’s costs and expenses, and other relief the Commission deems just.

Mobility submitted a response to the original complaint, asserted affirmative defenses, and counterclaimed that Venture improperly applied its pricing catalog and requested a refund of payments made to Venture, pre and post judgement interest, Mobility’s costs, expenses, and other further relief the Commission deems appropriate. Venture did file a response to Mobility’s counterclaim.

Over the next two and one-half years, the parties engaged in discovery and requested multiple procedural schedules and changes to those procedural schedules.

On November 8, 2022, Venture filed a Motion to Amend Complaint alleging breaches of the Interconnection Agreement (ICA) by Mobility, and requested the Commission accept for filing, Venture's First Amended Complaint, and that the Commission issue a new procedural schedule, and other relief the Commission deems just and reasonable. On November 18, 2022, Mobility filed an Objection to the Motion to Amend Complaint and Motion to Dismiss.

## **ANALYSIS**

### **1. The Commission should Deny Venture's Motion to Amend.**

Venture's filing, though captioned as a Motion to Amend Complaint, does not actually ask the Commission to permit Venture to Amend the original complaint. Instead, the filing merely asks the Commission to accept Venture's First Amended Complaint for filing. Further, Venture's Motion to Amend Complaint cites no legal authority permitting Venture to amend its original complaint at this juncture.

If the Commission were to overlook the deficiencies in Venture's Motion and for the sake of efficiency, apply the legal authority, ARSD 20:10:01:16 does permit the amendment of pleadings. The amendment is limited to once as a matter of right if filed prior to a responsive pleading or with 20 days from the date the pleading was filed and served, whichever is earlier, or after this time, by stipulation of the parties or upon application and at the discretion of the commission. In this case, the complaint, and response have been filed, more than 20 days ago and there has not been a stipulation of the parties regarding amendment of the complaint filed in the docket, so any amendment to the complaint can only be granted at the discretion of the Commission.

Venture does not provide a proper explanation of why Venture, at this point in the process, should be permitted to amend the original complaint. After review of Venture's Motion and of the First Amended Complaint Venture filed on November 8, 2022, the allegations contained in the proposed First Amended Complaint appear to be distinct from the original complaint. Though the parties are the same, the original complaint and the First Amended Complaint consider two distinct issues. The original complaint focuses on what interconnections charges are appropriate, and whether the billings were appropriate while the First Amended Complaint

focuses whether Mobility's alleged abandonment of direct interconnection and the alleged consequent indirect imposition of toll calling is a violation of the ICA.

Venture has offered no reason as to why this new alleged breach of the ICA should be wrapped up into a complaint stemming from occurrences more than four years ago. Without further explanation or a valid reason for which the Commission should grant the Motion to Amend, the Motion should be denied.

## **2. Mobility's Motion to Dismiss is proper.**

Mobility's Motion to Dismiss appropriately lays out the standard for a Motion to Dismiss for lack of prosecution and appropriately describes the status and history of the docket. "[D]ismissal of the cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of the particular case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude." *Dakota Cheese, Inc. v. Taylor*, 525 NW2d 713, 716 (SD 1995). (Internal citations omitted)

There has been no formal action in this docket for nearly a full calendar year, until Venture filed this most recent Motion to Amend. While Venture has engaged in some informal discussions with Mobility and Staff, many of which involved the issues raised in Venture's Motion to Amend Complaint, Venture has not taken formal steps to proceed with the complaint currently before the Commission. Staff does not object to Mobility's Motion to Dismiss and the Commission would be well within its authority to grant Mobility's Motion to Dismiss.

## **Conclusion**

Because the initial complaint and Venture's First Amended Complaint encompass two distinct issues that occurred at separate times, it would be more appropriate for Venture to file a second complaint instead of amending the initial Complaint. A separate Complaint would allow the parties to build a record, as it relates specifically to the issues included in Venture's First Amended Complaint. The parties can then address the initial complaint in Docket CT20-001.

Dated this 29<sup>th</sup> day of November 2022.

*Amanda M. Reiss*

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