

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT) DOCKET NO. CT20-001
OF VENTURE COMMUNICATIONS)
COOPERATIVE AGAINST AT&T MOBILITY)

**NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY'S ANSWER TO
COMPLAINT OF VENTURE COMMUNICATIONS COOPERATIVE AND
COUNTERCLAIM**

COMES NOW, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T Mobility") and files its Answer. On May 12, 2020, Venture Communications Cooperative ("Venture") filed a Complaint requesting the South Dakota Public Utilities Commission ("Commission") find that AT&T Mobility failed to pay for local interconnection facilities ordered by AT&T Mobility in Access Service Requests ("ASRs") at the rates set forth in Venture's price list ("the Complaint").

On May 28, 2020, the Parties filed a joint request that the Commission waive the requirement for an answer to be filed within twenty (20) days pursuant to ARDS 20:10:01:09 and instead be filed on or before June 16, 2020. At the June 9, 2020, Commission Meeting, the Commission granted the parties' joint motion. Thus, AT&T Mobility is timely filing this Answer.

ANSWER

For its Answer to the Complaint brought by Venture Communications Cooperative, Inc. ("Venture"), Defendant AT&T Corp. ("AT&T") states as follows:¹

1. Venture is a South Dakota Cooperative with its principal place of business at 218 Commercial Avenue, S.E., Highmore, SD 57345. Venture is an incumbent local exchange carrier ("LEC") that provides various telecommunications services, including but not limited to local and long distance services to its customers. As a LEC, Venture is obligated under the Communications Act of 1996 "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. 251 (a)(5).

ANSWER: Upon information and belief, AT&T Mobility admits the allegations in Paragraph 1.

¹ AT&T denies any allegation that is not specifically admitted.

2. AT&T M is a LLC with offices at 1025 Lenox Park Boulevard NE, Atlanta, Georgia 30319. AT&T M is a Commercial Mobile Radio Service ("CMRS") provider that offers wireless telecommunications services. AT&T M is authorized to do business in South Dakota.

ANSWER: AT&T Mobility denies the allegations of Paragraph 2. AT&T Mobility affirmatively states that 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 ("CRMS") providers that offer wireless telecommunications services. AT&T Mobility does not object to substituting New Cingular Wireless PSC, LLC d/b/a AT&T Mobility as the party of record.

3. In early January of 2004, Venture and AT&T M's predecessor entered into a Reciprocal Interconnection Transport and Termination Agreement ("the Agreement") pursuant to the requirements of Section 251(b)(5) of the Telecommunications Act of 1996. The Agreement was filed with the South Dakota Public Utilities Commission ("SD PUC") on February 18, 2004, as required by 47 U.S.C. §252(c)(1). By Order dated April 5, 2004, the SD PUC Approved the Agreement.

ANSWER: AT&T Mobility affirmatively states that its predecessor, WWC License L.L.C., which is a predecessor company in interest to New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, entered into the Agreement. AT&T Mobility admits the remaining allegations of Paragraph 3.

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

ANSWER: AT&T Mobility admits the allegations of Paragraph 4.

5. For a portion of the traffic exchanged between Venture and AT&T M, their networks interconnect indirectly, utilizing the transport services of South Dakota Network ("SDN") in Sioux Falls, South Dakota. For AT&T M mobile to land traffic destined to Venture customers, AT&T M connects to Venture's end offices located in Highmore, Sisseton, and Britton South Dakota. AT&T M pays SDN for transport and pays Venture for local interconnection into Venture's switch, per Venture's local price list. For land to mobile traffic, the route is the same, with the traffic flowing in the opposite direction.

ANSWER: AT&T Mobility admits the allegation set forth in the first sentence of Paragraph 5.

AT&T Mobility denies the remaining allegations of Paragraph 5.

6. The Agreement between the parties continues in full force and effect today and traffic has been exchanged in the same manner since inception of the Agreement.

ANSWER: AT&T Mobility admits the allegations set for in Paragraph 6.

7. AT&T M interconnects with Venture's switch using SS7 trunks at the Digital Signal level 0 rate ("DSO"). DSO is defined by Wikipedia as "Digital Signal 0 ("DSO is a basic digital signaling rate of 64 kilobits per second ("kbit/s ")), corresponding to the capacity of one analog voice-frequency-equivalent communication channel. " Consistent with this definition, each SS7 trunk is capable of providing interconnection for a single call at any given time. AT&T M orders the interconnection trunks by submitting industry-standard ASRs to Venture. Venture complies with the ASR, then bills AT&T M for the services AT&T M orders, pursuant to its price list for provisioning of local services to carriers.

ANSWER: AT&T Mobility denies the allegation of the first sentence of Paragraph 7. AT&T Mobility affirmatively states that during the term of the Agreement, it issued Access Service Requests ("ASRs") with Venture for the provision of four DS1 circuits (two intrastate and two interstate) to be billed and connected at a DS1 level, and at this time it only maintains two DS1 circuits for the purpose of local interconnection. To the extent that the allegations in Paragraph 7 purport to characterize a definition of certain facilities or services commonly provided by local exchange carriers, AT&T Mobility respectfully refers the Commission to such definition for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations of Paragraph 7.

8. AT&T M ordered and has paid for SS7 trunks at DSO level for years. In August of 2019, AT&T M began short-paying Venture for 96 DSO mobile cellular digital trunks and associated charges.

ANSWER: AT&T Mobility denies it ordered interconnection facilities at the DSO level. AT&T Mobility affirmatively states that beginning in May 2018 its agent, TEOCO, issued the original dispute (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. AT&T Mobility further states that it 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. AT&T admits the remaining allegation of Paragraph 8.

9. AT&T M is disputing monthly recurring charges on a total of 96 trunks (24 trunks in four circuits), as follows:

<u>Circuit 22/HCGS/158146</u>			
<u>Qty</u>	<u>Description</u>	<u>Rate</u>	<u>Total</u>
1	SS 7 Route Set	\$150	\$150
24	SS7 Signaling charge	\$10	\$240
24	Mobile Cellular Digital Trunks	\$98.50	\$2364
Total monthly recurring charges, per circuit			\$2754.00

The disputed charges are the same for the other circuits, namely Circuit 22/1-1CGS/159385, Circuit 22/HCGS/159249, and Circuit 22/HCGS/117755.

ANSWER: AT&T admits the allegations of Paragraph 9.

10. AT&T M has claimed that the pricing of the SS7 trunks transported within the four DSI circuits listed in paragraph 9 should be governed by the LECA or NECA tariffs. AT&T M also claimed that it ordered DS Is for interconnection purposes, rather than the 24 separate DSOs. While DS1s are commonly used for transport purposes, Time Division Multiplexed ("TDM") interconnection can only be accomplished at a DSO level or a single voice frequency equivalent communication channel. Venture is providing interconnection facilities to AT&T M, not transport.

ANSWER: AT&T admits that in the course of the dispute that is the subject to this complaint it has repeatedly explained to Venture that Appendix A, Section 5.0 of the Agreement provides that interconnection facilities should be priced "based upon the lowest Telephone Company interstate or intrastate rate published in the Telephone Company's tariff or pricing catalog," and that Venture's intrastate tariff is LECA, and the LECA tariff provides that the access rates will mirror the NECA 5 interstate tariff. Since the rates are the same, Venture should be billing the interconnection T1's based on the NECA 5 interstate tariff. As to the allegation in Paragraph 10 regarding AT&T's order of interconnection facilities, it refers the Commission to its Answer to paragraph 7, above. AT&T denies the remaining allegations of Paragraph 10.

11. Venture has continuously denied AT&T M's claims. AT&T M refused to accept Venture's explanation of its bills and denial of AT&T M's claims. Commencing with the August 2019 billing, AT&T M ceased paying Venture's bills for the interconnection trunks it ordered from Venture. From that date through the February 2020 billing, AT&T M short-paid Venture \$76,402.06, which sum continues to increase monthly. AT&T M refuses Venture's demands for payment.

ANSWER: AT&T Mobility admits the first sentence of paragraph 11. AT&T affirmatively states that Venture continues to remit billing for the interconnection facilities in a manner that is inconsistent with the terms of the Agreement and Venture's access service tariffs. AT&T affirmatively states that for invoices issued by Venture between August 2019 and February 2020, it has withheld payment to Venture for certain improperly billed charges in an amount to be proven at hearing. AT&T denies any remaining allegations of Paragraph 11.

12. Section 3.1 of the Agreement describes the types of Interconnection Facilities that may be utilized by the parties for the exchange of traffic. The pricing of the Interconnection Facilities is addressed in 115.0 of Appendix A of the Agreement.

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.

ANSWER: AT&T Mobility admits the allegation in the first sentence of Paragraph 12. AT&T affirmatively states that Section 5, of Appendix A of the Agreement states:

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.

AT&T denies the remaining allegation of Paragraph 12.

13. Venture's interstate tariff is the NECA tariff, and its intrastate tariff is the LECA tariff. Those tariffs include pricing for switched access charges and transport, but not for local interconnection. Venture's local pricing catalog includes a monthly rate for "Mobile Cellular Digital Trunks" of \$98.50 per trunk. It also contains an SS7 Signaling Charge of \$10 per trunk per month. Venture's pricing catalog covers services/facilities that are not covered in the tariffs. Venture is authorized to use its pricing catalog, per the Agreement.

ANSWER: To the extent that the allegations in Paragraph 13 purport to characterize Venture's NECA and LECA tariffs, AT&T Mobility respectfully refers the Commission to such tariffs. AT&T Mobility denies any remaining allegations in Paragraph 13.

14. The rate elements set forth in Paragraph 9 consist of the following:
- a. SS7 Route Set of \$150: The route set is established for the purpose of supporting call signaling and is charged on a per trunk group basis. Venture does not set this charge, it is a pass through charge from SDN.
 - b. SS7 Signaling Charge of \$10. This per trunk charge is established to recover Venture's costs associated with performing the call signaling. The monthly rate is contained in Venture's local price list.
 - c. Mobil Cellular Digital Trunk Charge of \$98.50. This is the charge for each trunk supporting a single simultaneous call. It is charged on each of the 24 trunks within each of the four disputed circuits. The monthly rate is also contained in Venture's local price list.

ANSWER: AT&T Mobility admits that the rates that the rates set forth in Paragraph 14 are charged by Venture for its purported provision of interstate switched access services ordered by AT&T Mobility. AT&T Mobility denies any remaining allegations in Paragraph 14.

15. Venture provided the trunks pursuant to the instructions of AT&T M contained in the ASR's submitted to Venture, which required Venture to establish a new end office Trunk Group for 2-way (originating and terminating) traffic, utilizing Signaling System 7 for call signaling, with 24 trunks at DSO rates. All of the 96 trunks were tested and accepted by AT&T M at the time of turn up. Of the four circuits being disputed, one was activated in 2012 and three replaced existing circuits in 2018, pursuant to ASR's submitted by AT&T M in late 2017. Nothing has changed the manner in which Venture has provided interconnection to AT&T M since the parties negotiated the Agreement.

ANSWER: AT&T affirmatively states that it submitted ASRs for four DS1 interconnection trunks pursuant to Venture's access service tariffs. AT&T Mobility denies the remaining allegations of Paragraph 15.

16. The Agreement does not authorize AT&T M to discontinue payment of charges it disputes

ANSWER: AT&T denies the allegation in Paragraph 16.

17. Venture has correctly denied AT&T M's disputes.

ANSWER: AT&T denies the allegation in Paragraph 17.

PRAYER FOR RELIEF

AT&T denies that Venture is entitled to any relief in this matter.

AFFIRMATIVE DEFENSES

AT&T Mobility asserts the following additional defenses without assuming the burden of proof on any such defenses that would otherwise rest on Venture and reserves its right to assert additional defenses and further amend this answer when, and if, appropriate.

FIRST DEFENSE

Venture's claims, at least in part, relate to facilities and services AT&T Mobility purchased out of Venture's *interstate* tariff, and therefore this Commission lacks jurisdiction to consider such claims.

SECOND DEFENSE

Venture has failed to bill for its services in a manner that is consistent with either the parties' Agreement, or the applicable tariffs from which AT&T Mobility purchased the service.

THIRD DEFENSE

Venture's claims are barred as they seek to recover for services that Venture either did not provide, or for which it does not have tariffs. Switched access circuits are billed on three basic elements – entrance facility, transport, and tandem/end office port charges. In the case of the facilities in question in this dispute, the facilities are provided by multiple providers. The entrance facility charge is being billed by CenturyLink to connect AT&T Mobility's MTSO to the CenturyLink end office. South Dakota Network (SDN), provides and bills for the DS3 facility from the CenturyLink end office to Venture's tandem or end office. The only rate element left is a port charge for the connection to Venture's tandem or end office. The LECA intrastate tariff

applicable to Venture's provision of service, mirrors the NECA 5 interstate tariff, and that tariff does not have a separate switched port charge for DS1 facility, instead allocating costs to other rate elements. Since there are no applicable rate elements in the applicable tariff, Venture is improperly billing AT&T Mobility.

FOURTH DEFENSE

Venture's claims are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

WHEREFORE, AT&T Mobility requests the Commission deny Venture's Complaint and provide any and all other relief the South Dakota Public Utilities Commission deems just and equitable.

COUNTERCLAIMS

For its Counterclaims against Plaintiff-Counter-Defendant Venture Communications Cooperative ("Venture"), Defendant-Counter-Plaintiff New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T Mobility"), without waiving its affirmative defense of a lack of commission jurisdiction to hear this matter in whole or part, states as follows:

PARTIES

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

BACKGROUND

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 an Order dated April 5, 2004.

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 placed the orders with Venture for four (4) DS1 facilities pursuant to Venture’s interstate (two (2) DS1s)² and intrastate tariffs (two (2) DS1s) via Access Service 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 Group³, 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 DSO level.

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

² Although, the Parties dispute covers charges by Venture for both *interstate* and *intrastate* facilities, it is AT&T Mobility’s position that this Commission does not have jurisdiction over services provided pursuant to interstate tariffs, and therefore only seeks recovery of those claims related to intrastate services.

³ The Agreement defines “Trunk Group” as “a set of trunks of common routing, origin and destinations, and which serve a like purpose or function.”

ALLEGATIONS

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.

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.

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*).

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 from Venture. Since there are no applicable rate elements in the applicable tariff, Venture is improperly billing AT&T Mobility.

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.

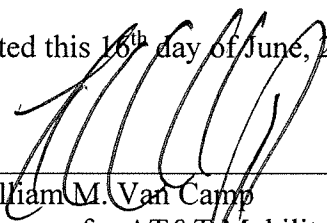
11. By improperly applying its pricing catalog, Venture billed AT&T Mobility, and until August 2019, AT&T Mobility remitted to Venture, amounts far in excess of the appropriate intrastate rates for the DS1 facilities.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, AT&T Mobility respectfully requests that judgment be entered for AT&T Mobility, as follows:

- A. Refund of the amounts paid by AT&T Mobility for the DS1 services provided by Venture for the period allowed pursuant to the applicable South Dakota statute of limitations in an amount to be proven at hearing;
- B. Pre-judgment and post-judgment interest for all claim amounts;
- C. AT&T Mobility's costs and expenses, including attorneys' fees;
- D. For such other and further relief as the Commission deems appropriate.

Dated this 16th day of June, 2020.



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CERTIFICATE OF SERVICE

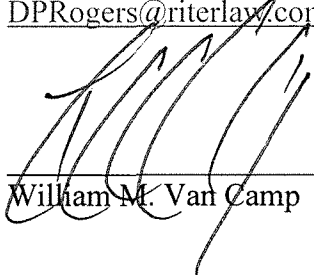
The undersigned hereby certifies that a true and correct copy of the foregoing in the above-entitled action was delivered by electronic mail this 16th day of June, 2020, to the following:

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