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November 13, 2006

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Ms. Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre SD 57501-5070


RE: SDPUC Docket TC06-159
In the matter of the Petition of Venture Communications Cooperative for
Arbitration Pursuant to Telecommunications Act of 1996 to resolve Issues
Relating to an Interconnection Agreement with Alltel Communications, Inc.
GPGN File No. 5925.060537

Dear Ms. Van Gerpen:

Enclosed for filing, please find Alltel's Reply to Venture's Opposition to Use Office of Hearing
Examiners in the above-entitled matter.

By copy of this correspondence, I am intending service by email on attorneys Darla Rogers,
Mary Sisak, Ben Dickens and Rich Coit. If you have any questions, please call me.

Sincerely,



Talbot J. Wiczorek

TJW:klw
Enclosure

c: Darla Rogers
Mary Sisak/Ben Dickens
Rich Coit
Kara Van Bockern
Clients

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

IN THE MATTER OF THE PETITION OF)	
VENTURE COMMUNICATIONS COOPERATIVE)	
FOR ARBITRATION PURSUANT TO THE)	
TELECOMMUNICATIONS ACT OF 1996)	DOCKET No. TC06-159
TO RESOLVE ISSUES RELATING TO AN)	
INTERCONNECTION AGREEMENT)	
WITH ALLTEL COMMUNICATIONS, INC.)	

ALLTEL’s REPLY TO VENTURE’S OPPOSITION TO USE OFFICE OF HEARING EXAMINERS

COMES NOW, Alltel Communications, Inc., by and through its attorneys of record, Talbot J. Wieczorek and the law firm of Gunderson, Palmer, Goodsell & Nelson, LLP and Stephen B. Rowell of Alltel Communications, Inc., hereby submits this reply in support of Alltel’s Request to Use the Office of Hearing Examiners. This reply addresses issues, some of them raised for the first time, contained in the Response to the Affidavit of Ron Williams filed by Venture Communications Cooperative.

1. Legislative History

Venture’s response for the first time makes an argument that somehow the motivations of the legislator who was a sponsor of the bill that initially created SDCL § 1-26-18.3, results in this Commission not applying the statute to this case. The citation to attorneys with the Bureau of Personnel cannot be given any merit.

The motivation of the legislature in passing a statute is not a basis for making a determination when the statute is clear on its face that it applies to any contested case. What legislative history that does exist supports the use of the Office of Hearing Examiners in this case. When one reviews the legislative history provided as part of the annotation to the statute it

shows SDCL § 1-26-18.3 was originally passed in 1995. The statute was amended in 2003. In 2003, the language of the statute was changed to apply to “any contested case” as opposed to “a contested case.” Obviously, the intent of the legislature in 2003 was to apply this statute to all contested cases, not simply state employee disputes.

2. Amount in Controversy

The Affidavit of Ron Williams clearly shows the amount in controversy exceeds \$2,500. Rather than contest the amounts as set forth by Mr. Williams, Venture attempts to argue that because the Commission may pick one side over the other, there is no amount in controversy. Venture does not provide any cases that support this analysis.

If one looks to the federal system, one finds that for diversity jurisdiction to exist in federal court, there has to be an amount in controversy. An analogy in this case can be made to the federal court’s determination of what constitutes an amount in controversy in installment contracts. Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 3d §3710 provides a summary of how the federal courts handle these cases. Like an installment contract, there are monthly amounts of payments in an interconnection agreement. When the payment amounts being argued over in previous months already exceed the jurisdictional amount, the federal courts find the amount in controversy has been satisfied. *Id.* Further, even if the contested amounts to date do not exceed the jurisdictional amount, where a party seeks a declaration on the terms of a contract, the entire contract amount is considered in establishing the amount in controversy. *Id.*

There is already ten (10) months of traffic that has been exchanged between these parties that constitute disputed months regarding the rates and amount due. As Mr. Williams’ Affidavit clearly showed, the amount for each of these months easily exceeds \$2,500. See Affidavit of

Williams ¶ 3. Further, as recognized by the pleadings, the parties have agreed that the interconnection agreement would be at least one year long which means there will be at least two more months of traffic being exchanged where the differences between the parties is more than \$2,500 per month.

Finally, SDCL § 1-26-18.3 provides that a party may give notice of a request to use the Office of Hearing Examiners “no later than ten days after service of the Notice of Hearing issued pursuant to 1-26-17.” The Notice of Hearing has not yet been given by this Commission. Alltel could certainly reassert this motion after the parties begin discovery and after this Commission provides the notice. However, based on the affidavits and pleadings to date, it is clear that the required amount under SDCL § 1-26-18.3 has been met and the Commission should refer this matter to the Office of Hearing Examiners immediately.

3. There is no federal pre-emption of the use of the Office of Hearing Examiners

As this Commission has previously decided, federal law does not pre-empt SDCL § 1-26-18.3. This Commission **In the Matter of the Petitions of Armour Independent Telephone Company, Bridgewater-Canistota Telephone Company, Golden West Telecommunications Cooperative, Inc., Kadoka Telephone Company, Sioux Valley Telephone Company, Union Telephone Company, and Vivian Telephone Company (collectively the “Golden West Companies”)** for Arbitration Pursuant to the Telecommunications Act of 1996 to Resolve **Issues Relating to Interconnection Agreements with WWC License L.L.C. (“Western Wireless”)** by a decision issued July 14, 2006, made such a determination. The pre-emption analysis submitted by Venture is a regurgitation of that submitted by the Golden West Companies in the other proceeding. Clearly, the Office of Hearing Examiners’ statute is viable

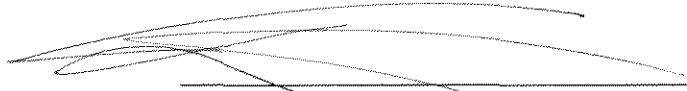
in these situations and, as a matter of right, Alltel is entitled to have this matter referred to the Office of Hearing Examiners.

3. Conclusion

Based on the Petition and Response filed herein, the Affidavit of Ron Williams and the information set forth above, Alltel respectfully requests this Commission immediately refer this matter to the Office of Hearing Examiners for purposes of scheduling, hearing and ultimate referral back to this Commission with proposed findings, conclusions of law and decision.

Dated this 13 day of November, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of November 2006, a true and correct copy of **ALLTEL's REPLY TO VENTURE'S OPPOSITION TO USE OFFICE OF HEARING EXAMINERS** was by email and first-class, U.S. Mail, postage paid to:

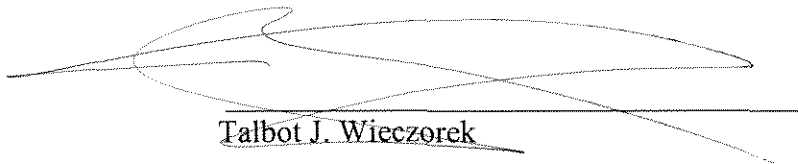
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