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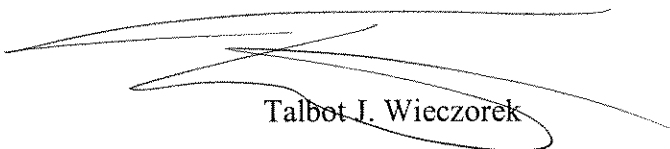
Ms. Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
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Pierre SD 57501-5070

RE: IN THE MATTER OF THE PETITION OF VENTURE COMMUNICATIONS
COOPERATIVE FOR SUSPENSION OR MODIFICATION OF LOCAL DIALING
PARITY RECIPROCAL COMPENSATION OBLIGATIONS
SDPUC Docket File Number TC 06-181
GPGN File No. 5925.060651

Dear Ms. Van Gerpen:

Enclosed for filing please find **ALLTEL AND RCC'S RESPONSE AND MOTION TO DISMISS THE VENTURE PETITION FOR SUSPENSION OR MODIFICATION** in the above-entitled matter. By copy of same, counsel have been served electronically and via U.S. mail.

Sincerely,



Talbot J. Wieczorek

TJW:klw

Enclosure

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

In the Matter of the Petition of Venture)
Communications Cooperative for suspension or) Docket No. TC06-181
modification of local dialing parity and reciprocal)
compensation obligations.)

**ALLTEL AND RCC'S RESPONSE AND MOTION TO DISMISS THE VENTURE
PETITION FOR SUSPENSION OR MODIFICATION**

COMES NOW Alltel Communications, Inc. ("Alltel") and RCC Minnesota, Inc. d/b/a Unicel ("RCC") jointly submit this Response and Motion for Dismissal of the Venture Petition for Suspension or Modification. (the "Petition"). In addition to seeking an outright dismissal and/or denial of the Petition as discussed below, Alltel and RCC specifically deny each and every allegation within the Petition unless otherwise admitted herein. Alltel and RCC admit that (i) as of 2006 Venture had approximately 14,000 subscriber lines nationwide; (ii) Alltel requested local dialing parity for locally rated NPA-NXXs and reciprocal compensation for telecommunications traffic; (iii) Venture filed for arbitration in connection with the interconnection negotiations with Alltel; (iv) to the extent an interconnection agreement is approved by the Commission other wireless carriers may be able to elect to interconnect with Venture under the same terms and conditions as the approved agreement; and (v) Venture is required under 47 U.S.C. § 251(b) to provide local dialing parity and reciprocal compensation to wireless carriers for telecommunications traffic exchanged between the parties.

INTRODUCTION

The Telecommunications Act of 1996 (the “Act”) and its twin goals of fostering competition and advancing universal service fundamentally changed telecommunications regulation. Prior to the Act, the regulatory regime discouraged competition. Following passage of the Act, the Federal and State regulatory bodies are charged with implementing a new regulatory regime in order to “remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress.” *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, FCC 96-325 ¶ 1 (1996). (“*First Report and Order*”). Rather than continuing to shield incumbent local exchange carriers (“ILECs”), like Venture, from competition the Act requires them to be subject to competitive pressures that ultimately lead to greater customer benefits. In acknowledging the public interest in a competitive marketplace the FCC has stated:

Competition in local exchange markets is desirable, not only because of the social and economic benefits competition will bring to consumers of local services, but also because competition will eventually eliminate the ability of an incumbent local exchange carrier to use its control to bottleneck local facilities to impede free market competition.

First Report and Order at ¶ 4.

The tools Congress has forged in order to promote true competition are included within Section 251 of the Act, two of which Venture now seeks to effectively avoid through its Petition: dialing parity under 251(b)(3); and its reciprocal compensation obligation under 251(b)(5). Specifically, Venture requests modification of its dialing parity obligation such that (1) it not be required to provide local dialing to its subscribers;

and (2) it not be required to transport its subscribers' traffic, bound for competitors, outside of its network or beyond the local wireline calling area. Additionally, Venture requests modification of its reciprocal compensation obligation such that: (1) it not be required to pay any reciprocal compensation to competitors for intraMTA traffic it treats as toll traffic; and (2) it be relieved of its symmetrical reciprocal compensation requirement, thereby forcing its competitors to submit forward looking cost studies to establish their rates.

Venture's request for modification is an attempt to substantially expand and exploit the limited relief available under Section 251(f)(2), which allows LECs with fewer than two percent of the nation's subscriber lines to petition the state commission for suspension or modification of requirements imposed on incumbent local exchange carriers under Sections 251(b) and (c). In considering such petitions it is clear that "Congress intended the exemption, suspension or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension or modification. *First Report and Order* at ¶ 1262. Given the Act's goal of fostering competition among providers, "Congress did not intend to insulate small or rural LECs from competition and thereby prevent subscribers in those communities from obtaining the benefits of a competitive local exchange service." *Id.* Accordingly, in order to justify a suspension or modification of a LEC's competitive obligation specific evidence must be offered to sustain a finding that "application of the [competitive] requirements would be likely to cause undue economic burdens beyond economic burdens associated with efficient competitive entry." *First Report and Order* at ¶ 1262.

The bottom line remains, given the pro-competitive focus of the Act, Venture must prove the suspension/modification request is the appropriate relief from otherwise applicable, sound consumer-focused competitive requirements required of all communications providers. In this case, Venture's request fails for several reasons: (1) its specific requests for modification of its dialing parity and reciprocal compensation obligations go beyond the scope of relief afforded under Section 251(f)(2); (2) its request for modification of its dialing parity obligation would violate its obligations as an eligible telecommunications carrier; (3) Venture has failed to prove a significant or undue economic burden beyond self-interested protection of its monopoly power and market control; and (4) the Venture request is inconsistent with the public interest in a competitive local exchange market. Accordingly, Venture's Petition must be dismissed or otherwise denied.

I. VENTURE'S ATTEMPT TO SUSPEND OR MODIFY ITS DIALING PARITY OBLIGATION MUST BE DISMISSED.

In seeking "modification" of its dialing parity obligation under 47 U.S.C. § 251(b)(3), Venture makes two specific requests: (1) No requirement to provide local dialing; and (2) No requirement to transport or incurs costs of transport of intraMTA traffic outside of its service territory or beyond the wireline calling area. *See Petition for Suspension or Modification, p.4.* Both warrant immediate dismissal by the Commission.

At the outset, Venture's first request: that it not be required to provide local calling, must be dismissed given Venture's independent obligation to provide local calling as an Eligible Telecommunications Carrier ("ETC") within the State of South Dakota. Moreover, Venture's second request, also under the umbrella of dialing parity: that it not be required to transport traffic outside its service area, is actually an attempt to

avoid its separate interconnection obligation under 47 U.S.C. §251(a)(1), and not properly the subject of a suspension and/or modification petition under 47 U.S.C. §251(f)(2).

A. VENTURE CANNOT AVOID ITS INDEPENDENT REQUIREMENT TO PROVIDE LOCAL DIALING.

Venture's proposed limitation and/or restriction on its subscribers local calling ability violates its independent requirement as an ETC. In its First Report and Order implementing Sections 214(e) and 254 of the Communications Act of 1934 (the "Act"), the FCC designated the services a carrier must provide in order to be designated as an ETC in order to receive federal universal support. *Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8809-25 (1997)*. One of the supported services Venture must continue to offer, in order to retain its ETC designation, is "local usage," 47 C.F.R. §54.101(a)(2). However, an obvious result of Venture's suspension request is the restriction, limitation and/or partial elimination of local calling available to its own subscribers. Venture's request on this issue is quite clear: "Petitioner requests modification of the dialing parity requirement such that Venture is not required to provide local dialing...." *See Petition for Suspension or Modification, pp.4 and 20*.

If Venture is relieved of its dialing parity obligations, its own local exchange customers will not be provided, as part of their basic local calling plan, access to all telephone numbers rated to their local exchange or calling area. For example, Alltel has wireless numbers rated local to the Britton, SD exchange. A suspension of Venture's dialing parity obligation would mean that a Venture subscriber at home in Britton could not make a local call to his wife, an Alltel subscriber with a wireless number rated local

to the Britton exchange, at her office three blocks away. In that situation, the call would be treated as a ten digit toll call, despite the wireless number being rated as local to the Britton exchange. This result is clearly a violation of Venture's independent obligation to provide local usage as an ETC. A suspension of a dialing parity obligation which allows Venture to restrict or otherwise prohibit its subscribers access and use of local calling to locally rated numbers, necessarily violates Venture's designation as an ETC and Venture is estopped to request such or it must forfeit its designation as an ETC – the latter outcome, forfeiture of its ETC status, Venture most assuredly does not intend given the substantial support it receives as a result of universal service funding. Venture's own request could not be clearer on this issue, it seeks to eliminate its requirement to provide local dialing. This request must be dismissed in its entirety due to its entirely separate obligation to provide local calling as an ETC.

B. VENTURE CANNOT AVOID ITS INDEPENDENT REQUIREMENT TO INDIRECTLY INTERCONNECT.

Venture's second request under the guise of dialing parity is no more than an attempt to avoid its obligation to indirectly interconnect upon request – an obligation that is not subject to suspension relief under 47 U.S.C. §251(f)(2). In addition to avoiding its broad obligation to provide local calling, Venture further requests that it not be “required to transport traffic outside of its service territory or beyond the wireline local calling area.” *See Petition for Suspension or Modification, pp.4 and 20.* Although Venture attempts to commingle the issue of transport and network connectivity with dialing parity in order to seek suspension relief, the true nature of the request is one of interconnection rights and obligations under the Act. Specifically, 47 U.S.C. §251(a)(1) provides that each

telecommunications carrier has the duty to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” (emphasis added).

Venture’s attempt to negate its indirect interconnection obligation along with its dialing parity obligation is an improper and unlawful attempt to take advantage of the limited suspension relief provided under 47 U.S.C. §251(f)(2). Indirect interconnection, the exchange of traffic between two carriers by use of an intermediate carrier’s network – generally the local bell operating company’s network, is not an obligation of Venture, or right of Alltel, that can be suspended, modified or taken away under section 251(f)(2). Specifically, section 251(f)(2) provides in relevant part:

A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition....

(emphasis added).

Venture’s extended discussion of its obligation and the speculative costs involved to transport its traffic to assumed locations of distant POIs is a misplaced attempt to avoid its Section 251(a) indirect interconnection obligation and associated expenses. By seeking to reduce/eliminate its transport costs associated with indirect interconnection, Venture is asking this Commission to force direct interconnection. More specifically, Venture is attempting to force all competitive carriers that want or need to exchange traffic with Venture to purchase, build or lease facilities to the Venture network, wherever located and to forgo the option of exchanging traffic through the existing indirect interconnection network. Such relief from indirect interconnection is unavailable under a 251(f)(2) suspension petition. The affirmative obligation to indirectly

interconnect upon request is an obligation identified in subsection (a) of section 251 of the Act, not (b) or (c). Venture cannot modify or suspend its Section 251(a) interconnection obligation and Alltel and all other competitive carriers cannot be denied indirect interconnection through a suspension petition. Venture's request must be immediately dismissed.

II. THE COMMISSION HAS NO AUTHORITY TO SUSPEND FCC RULES 47 C.F.R. §§ 51.701, 51.703(B), OR 51.711

Venture's Petition is silent as to FCC Rules 51.701, 51.703(b), and 51.711, which establish LECs' reciprocal compensation obligations, including the prohibition on charging another carrier for its own local traffic, and the requirement that a competitor can obtain symmetrical compensation at an ILEC's rate. *Granting Venture's Petition would result in Venture violating these rules. Venture would be modifying the definition of traffic subject to reciprocal compensation, would deliver telecommunications traffic (defined here as intraMTA traffic) to IXC's and will assess access charges on those IXC's, and would not provide symmetrical reciprocal compensation.*

Venture has not asked the Commission for a suspension of these rules, nor could it. The Eighth Circuit Court of Appeals has clearly held that these rules promulgated by the FCC were properly grounded in the FCC's authority under 47 U.S.C. § 332 as applied to CMRS providers. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997). Because these rules have independent force under Section 332, they would not be affected by a Commission order suspending Section 251(b) obligations. A State Commission has no authority to suspend obligations imposed on LECs by the FCC pursuant to Section 332 – it has only the ability to suspend Section 251(b) obligations. As a result, Venture's Petition should be dismissed.

III. VENTURE’S ATTEMPT TO MODIFY THE SYMMETRICAL RECIPROCAL COMPENSATION REQUIREMENT MUST BE DISMISSED.

Venture’s request for modification of the long-standing symmetrical reciprocal compensation requirement, which predates even the Act, is beyond the scope of 47 U.S.C. §251(f)(2) and is based entirely on speculation without any affirmative support from Venture. Venture’s request to avoid its symmetrical reciprocal compensation obligation goes well beyond a suspension/modification of its obligations/requirements – Venture seeks to thrust a new requirement on CMRS providers, like Alltel and RCC, to establish their own forward-looking cost based rates. Such an unprecedented request certainly does not seek to suspend or modify a requirement imposed on Venture rather it seeks to affirmatively impose a new requirement on all CMRS providers seeking to compete with Venture. The long-standing and heavily tested rules and practice related to symmetrical reciprocal compensation and local exchange carrier cost studies were implemented with a necessary focus that imposed requirements on the incumbent local exchange carrier and its network and not on competitive carriers like Alltel and RCC. No legal basis is provided to reverse course and impose affirmative obligations on competitive carriers to develop their own rates or pay rates higher than those of the incumbent local exchange carrier. The Venture request is unprecedented and legally unfounded.

The scope of 47 U.S.C. §251(f)(2) pertains to the suspension or modification of requirements imposed on the incumbent local exchange carrier – not an imposition of affirmative obligations on competing carriers. Venture is not seeking specific suspension relief as it relates to an identified interconnection agreement or Commission Order, but

instead seeks to impose new obligations and take away rights of all of its competitors by its request for an asymmetrical reciprocal compensation arrangement. If granted it would limit all competitive carriers, even those who are not parties to this proceeding. Such a requirement is not within the scope of the relief provided under 47 U.S.C. §251(f)(2), nor is it warranted.

Beyond the prohibitive legal and practical implications of Venture's request, Venture's justification for the action is not factually supported and is entirely speculative. Venture openly acknowledges its justification for asymmetric compensation rates whereby it charges more than the competitive carriers is simply a "belief" based upon unfounded assumption of competitive carriers' network structure and costs. *See Petition for Suspension or Modification, pp.14 and 15.* Venture is demanding that Alltel (and all other unnamed competitive providers) be required to conduct and submit a cost study to establish their rates merely on the "belief" and hope that all competitors' cost studies will be lower than Venture's. This speculation does not constitute the support necessary for granting such an unprecedented request. And further, imposing asymmetric compensation on the more efficient network on the assumption that competitors' costs are lower is perverse to the intent of the Act. Such a result would require a competitive entrant to subsidize the less efficient incumbent network. As discussed above, the intent of the Act is to favor the creation of competition, not to thwart it as Venture seeks to do.

III. VENTURE'S PETITION IS NEITHER NECESSARY NOR CONSISTENT WITH THE PUBLIC INTEREST.

Venture's petition must also be dismissed and/or denied as it lacks the support necessary under 47 U.S.C. §251(f)(2) and because such a broad request is inconsistent

with the public interest in a competitive local exchange market. In order to grant a petition for suspension or modification the Commission must determine it necessary:

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible, and

(B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. §251(f)(2).

In order to show a significant adverse effect and an unduly burdensome requirement, Venture makes entirely self-interested and unsupported assumptions related to distant POIs, traffic levels and number of competitors. Each assumption is clearly speculative and most deviate from historical experience. For example, Venture incorrectly asserts several times that Alltel demands that any call within the major trading area (“MTA”) be treated as a local call. Throughout the parties’ negotiations, Alltel has simply maintained that if its wireless subscribers are assigned numbers rated in Venture’s local or EAS calling scope, Venture must allow its own subscribers to dial/call those locally rated numbers as local calls. *See Response of Alltel Communications, Inc. to Petition for Arbitration of Venture Communications Cooperative*, Docket No. TC06-159, ¶28 (2006). Venture rejected this proposal and simply maintains it can treat all calls to competitors, whether such a number is rated locally or not, as toll calls – thus requiring its own subscribers to pay toll charges to dial/call locally rated numbers. Venture fails to disclose that its request related to dialing parity will actually disadvantage and/or adversely impact its own subscribers by increasing their costs of calling to such locally rated wireless numbers.

Additionally, any change in the location of the distant POIs assumed by Venture necessarily changes the cost impact. Finally, in order to inflate its cost impact analysis, Venture inserts additional unnamed carriers into the equation who have historically been absent from the competitive mix and assumes exponential growth in wireless market share.

A potential increase in the cost of doing business under an established regulatory regime does not equate to a significant adverse economic impact on telecommunication users generally¹. The inclusion of the qualifiers “significant” and “unduly burdensome” necessarily assumes some cost increase or burden may be incurred by Venture before relief under 251(f)(2) is appropriate. In this case, Venture has posed a “sky is falling” or “doomsday” scenario that is based upon moving and/or flawed assumptions.

In addition to being required to establish a significant adverse economic effect and an unduly burdensome requirement, Venture must ultimately show its petition is in the public interest. *See* 47 U.S.C. §251(f)(2)(B). Venture’s analysis of the public interest is no more than a restatement of its assumed effect on its bottom line and the assumed or hypothetical increase in costs to its subscribers. It fails to also discuss or disclose that it has other means to recover cost increases, including universal service funds and access rate increases. It has wrongly assumed that any revenue loss or costs increase will be paid by its local end users. It has failed to allege and certainly has not shown that if its end users were required to pay more for their services that they would chose other options for service or would not pay such costs. It merely wants insulation from competition and that is not provided under the law. Additionally, the relief requested by Venture would

¹ In fact, the result of Venture’s requests would actually increase its own subscribers cost by making all calls to competitor’s customers toll calls.

ultimately have a negative impact on end-users who would be required pay toll charges for calls that would otherwise be local calls. The public interest analysis required under 47 U.S.C. §251(f)(2)(B) is more than a self-interested analysis.

In order to analyze the effect on the public interest, the consequences of Venture's petition must be understood. Suspension of dialing parity and reciprocal compensation requirements for calls handed to an IXC will result in the following:

- Venture can treat all calls from its end users to competitors as toll calls;
- Venture subscribers will incur toll charges when placing calls to customers of competitors, whether the number called is rated as local or not;
- Venture will be relieved of any obligation to pay reciprocal compensation to its competitors, yet it will receive access charges that are many times greater than reciprocal compensation charges for all calls placed to competitors;²
- Venture will have no incentive to enter into negotiated interconnection and reciprocal compensation agreements with competitors;
- Venture will control local dialing within its exchanges and gain an unfair competitive advantage.

An overall avoidance of paying any reciprocal compensation is clearly contrary to the goals of the Act to establish and foster competition while providing a choice of communication services. In realizing the public interest of paying reciprocal compensation, the FCC stated:

[P]ursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange service, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service. CMRS

² By eliminating any obligation to provide local dialing, Venture can treat all calls to competitors as toll calls. That coupled with its second request to suspend its obligation to pay reciprocal compensation on toll calls (calls handed to IXCs), will completely eliminate its obligation to pay reciprocal compensation.

providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. We believe that these arrangements should benefit all carriers, including small incumbent LECs and small entities because it will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carrier's networks.

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, FCC 96-325, 1045 (1996).

In order to foster competition and bring true choice in communication offerings, CMRS carriers like Alltel and RCC must ensure that their subscribers receive calls from Venture and other ILEC subscribers on the same local basis as Venture subscribers are able to call other Venture subscribers in the same local calling area. A suspension of dialing parity for locally rated numbers places competitive providers at a significant disadvantage because the effect of such a suspension discourages calls from Venture customers to customers of competitors because of the imposition of toll charges. That is precisely why Congress implemented local dialing parity as a specific requirement of the Act. To do otherwise, for the sole interest of Venture, is clearly inconsistent with the public interest as determined by the Congress within the Act.

Venture's request for "modification" is no more than a not-so-subtle attempt to eliminate competition, completely avoid any reciprocal compensation obligation and transform all its traffic to competitors into toll traffic, thereby collecting access charges it would not otherwise be entitled to collect and depriving its customers of competitive choices on such local calls. Such blatant self-interested, speculative and unsupported

requests must be denied as outside the scope of 47 U.S.C. 251(f)(2) and as most certainly not within the public interest.

CONCLUSION

For all the above-stated reasons, Alltel and RCC respectfully request dismissal and/or denial of the Venture Petition for Suspension or Modification.

Dated this 31 day of January, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of January 2007, a true and correct copy of **Alltel Communication, Inc.'s Reply To Opposition To Request Of Alltel To Use The Office Of Hearing Examiners** was sent electronically and by first-class, U.S. Mail, postage paid to:

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