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June 13, 2006

VIA FAX: 605-773-3809
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and NEXT DAY DELIVERY
Ms. Patty Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
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Pierre SD 57501-5070

FROM: **Talbot J. Wieczorek**

RE: Western Wireless License LLC –James Valley
GPGN File No. 5925.050184
SDPUC Docket TC 06-043

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COMMENTS:

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RE: SDPUC Docket File Numbers TC 06-043
In the matter of the Approval of Reciprocal Compensation Agreement between Alltel Communications d/b/a WWC License LLC and James Valley Cooperative Telephone Company
GPGN File No. 5925.050184

Dear Ms. Van Gerpen:

Enclosed please find WWC's comments in the above-entitled matter. The original and ten copies will be sent via Next Day Delivery. I have provided a copy of our comments to all counsel electronically and by U.S. Mail.

If you have any questions, please call me.

Sincerely,

Amy K. Koenig for

Talbot J. Wieczorek

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RE: SDPUC Docket File Numbers TC 06-043
In the matter of the Approval of Reciprocal Compensation Agreement between Alltel Communications d/b/a WWC License LLC and James Valley Cooperative Telephone Company
GPGN File No. 5925.050184

Dear Ms. Van Gerpen:

The purpose of this letter is to respond to the letters of South Dakota Telecommunications Association (SDTA), Venture Communications Cooperative and the Golden West Companies addressing the voluntarily negotiated interconnection agreement between Alltel Communications and James Valley Cooperative Telephone Company. The proposed agreement was filed for approval on May 4, 2006, and the letters were all submitted on May 24.

The provisions of the James Valley/Alltel agreement addressed in the letters are as follows: (1) Mutual agreement to use of a unitary blended rate for all types of traffic exchanged between the parties rather than individual local reciprocal compensation rates (and traffic exchange factors), or inter or intrastate access charges; and (2) a single point of direct interconnection ('POI') outside of the James Valley service area.

The letters do not contend that the agreed POI outside the service territory of James Valley is unlawful or even against the public interest. The letters raise this issue apparently only to argue that James Valley had no legal obligation to agree to this provision. This argument is irrelevant. In the words of the SDTA, "It appears ... that James Valley has possibly agreed to take on originating transport responsibilities that extend outside of its established local calling areas and

also outside of its cooperative service area." The Agreement was voluntarily negotiated and neither party to the agreement has asserted or need assert at this time that this POI provision is a legally required result. While Alltel can and will demonstrate in the appropriate proceeding that ILECS are required by law and by mere fairness to bear the costs of the transport of their own traffic to the POI between the parties whether it is located on the ILEC network or at the tandem switch of a third party transit service provider, that is not an issue in the voluntarily negotiated agreement between James Valley and Alltel.

The letters are correct that James Valley and Alltel also voluntarily negotiated a unitary blended rate that will apply to all traffic between the parties, regardless of jurisdiction of the traffic. Again this is an agreed result and was reached by each party for its own reasons. It is a blended rate meaning it is a rate that accounts for each Parties' perception of the value, volume and mix of the traffic exchanged between their networks. The rate is somewhere between the rates that might be applicable to interMTA traffic and what might be considered an acceptable local reciprocal compensation rate. While Alltel can not speak to what was in the mind of James Valley when it agreed to this provision, it seems obvious that a party would have taken into account its estimate of how much and what type of traffic is likely to be exchanged between the parties, the different rates that might apply to each of those types of traffic, the burden of having to distinguish each type of traffic, and the savings from being able to bill a unitary rate. Each party logically determined that the agreed blended unitary rate is a fair settlement of the associated complex compensation issues and agreed on the terms and provisions of the proposed interconnection agreement, including the blended rate.

Contrary to the letters, the mere fact that James Valley and Alltel agreed to a blended unitary rate does not "discriminate" against any carrier not a party to the agreement and nor is implementation "not consistent with the public interest, convenience and necessity". These are the relevant standards and are from the federal Telecommunications Act of 1996. 47 U.S.C. 252(e)(2). None of the letters raises any contention or evidence to demonstrate how this voluntarily negotiated agreement is not consistent with the public interest, convenience and necessity and no carrier is discriminated against. Furthermore, any carrier that chooses can opt into or elect the same terms as agreed to between James Valley and Alltel. 47 U.S.C. 252(ii).

Venture contends that it would be discriminatory even under an opt-in because the carrier may not have the same "mix of local, intrastate InterMTA and interstate InterMTA traffic" as Alltel. (Venture letter page 2). This contention is also without merit and easily answered. A carrier with a different mix of traffic simply can choose to not opt in but rather negotiate its own agreement with James Valley taking into account its own mix of traffic. This negotiation process is exactly what the Act provides and if it does not succeed, the carrier is free to arbitrate.

Although this interconnection agreement is negotiated and filed for approval under the federal law, the letters attempt to inject state statues. Assuming for the sake of argument that the state statutes are not preempted and have any relevance, the state statues are not violated by the proposed unitary rate. The state statutory standard regarding discrimination is less stringent that the applicable above quoted federal standard. The federal Act prohibits "discrimination", which as discussed above the Act does not prohibit the agreement because the same terms are available for opt in or better suited terms available by negotiation or arbitration. The state statute quoted by SDTA indicates a carrier may not "unjustly or unreasonable discriminate." SDCL § 49-31-11. Therefore, even if state law were applicable, if a distinction or discrimination existed, it is only prohibited if "unjust or unreasonable." The unified rate survives under the federal standard and therefore clearly would survive under the lower state standard if applicable. The letters have not shown that the provision is unjust or unreasonable.

There is also no basis to contend that as a result of the blended rate that the parties are receiving any "lesser compensation." SDCL § 49-31-110. Obviously a blended rate means that certain minutes may be rated lower and others higher, but the statute does not specify that the per minute rate is the applicable measure of such. Further, the blended rate incorporates the Parties' assessments of the ratios of traffic exchanged between their networks and accounts for other considerations regarding differing opinions as to whether certain traffic is compensable at all. Clearly if the per minute rate is the controlling measure, then, for example, the rates which the ILECs charge each other for certain traffic is also an unjust and unreasonable practice.

Venture also points to SDCL §§ 49-31-110 through 49-31-115, and apparently questions whether the unitary rate provision of the interconnection agreement would not comply with the "traffic identification" requirements contained in the statute. Venture, however, ignores the language of the South Dakota statute. For example, § 49-31-110, qualifies its requirements in several respects, including the lead phrase "If necessary" for the assessment of transport and termination charges and, most significantly, in setting its remedy for failure to provide sufficient "information" a carrier "may" classify all unidentified traffic as nonlocal traffic. While there is various other qualifying language in the statutes, use of the word "may" is sufficient to end this debate. The statutory remedy is not mandatory, but rather discretionary and if two carriers, such as James Valley and Alltel, agree that they are receiving "sufficient" traffic identification information between them and are each satisfied, then the issue is moot.

What the letters actually reveal is a more basic problem, and that is the unjust and unreasonable discrimination that is occurring due to the stark and unjustified difference between the reciprocal compensation rates and the intrastate and interstate access charges of the ILECs and as a result of the unjust and discriminatory application of those charges between ILECs and between ILECs and various other carriers as they exchange traffic. If strict application of the state statutes is needed or called for, it should be to remedy these unjust and unreasonable discriminatory

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practices. The regime of discriminatory traffic classification encouraged by those that have attacked the negotiated arrangements between Alltel and James Valley has produced an unsustainable wholesale compensation structure. The FCC had the forethought to largely remove CMRS carriers from this regime by providing the opportunity to engage in negotiations to arrive at a sensible and sustainable interconnection and compensation arrangement. James Valley and Alltel have done just that. Rather than attacking a negotiated arrangement, the commentors should be encouraged to seek similar resolution.

If you have any questions, please call me.

Sincerely,

Amy K Koenig for

Talbot J. Wieczorek

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