



South Dakota Telecommunications Association

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*Rural roots, global connections*

October 27th, 2006

Ms. Patty Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Ave.  
Pierre, SD 57501

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: Docket TC06-161, (In the Matter of the Filing for Approval of a Reciprocal Compensation Agreement between Sancom, Inc. d/b/a Mitchell Telecom and WWC License LLC)

Dear Ms. Van Gerpen:

The South Dakota Telecommunications Association (“SDTA”) offers this letter as its initial comments in the above referenced matter, in response to the public notice contained in this Commission’s “Weekly Filings” report for the period of October 5, 2006 through October 11, 2006.

Regarding the “Interconnection and Reciprocal Compensation Agreement” that has been filed for approval jointly by Sancom, Inc. and Alltel Communications, Inc., SDTA has a concern that it feels compelled to note for the record.

Specifically, SDTA would object to those provisions found in “Section 6” addressing the rate to be charged for InterMTA traffic that is exchanged between the contracting parties. That Section states that “Alltel shall compensate MT [Mitchell Telecom] for wireless to wireline InterMTA Traffic at a rate of \$0.03 per minute of use.” This language which proposes the establishment of a rate for InterMTA traffic that is different than MT’s Commission approved switched access rates results in a discriminatory application of MT’s tariffed access rates in violation of South Dakota law.

Under SDCL § 49-31-11 it is unlawful for a telecommunications company subject to this Commission’s jurisdiction to “unjustly or unreasonably discriminate between persons in providing telecommunications services or in the rate or price charged for those services.” The statute further provides that “[n]o telecommunications company may offer a rate or charge, demand, collect or receive from any person a greater or lesser compensation for any telecommunications service offered than it charges, demands, collects or receives from any other person for providing a like telecommunications service. [And], that “[n]o telecommunications company may make or give any unjust or unreasonable preference or advantage to any person, nor unjustly or unreasonably prejudice or disadvantage any

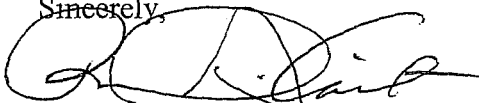
person, in the provision of any telecommunications service.” There is no exception set forth in this statute for telecommunications traffic that is terminated by LECs for CMRS carriers and there is also no language in the statute that would indicate its provisions do not apply to LEC switched access charges.

Applying a different and lower InterMTA rate to Alltel’s non-local telecommunications traffic, instead of MT’s tariffed switched access rates, gives “unjust” or “unreasonable” preference to Alltel and, in turn, extends an unjust or unreasonable “prejudice or disadvantage” to other telecommunications carriers (including the many landline long distance companies) that originate and send similar telecommunications traffic to MT for termination. Because of this discriminatory treatment, the Agreement further appears inconsistent with the standards governing this Commission’s review of the Agreement set forth in 47 U.S.C. § 252(e)(2).

SDTA’s concern regarding discrimination with respect to the filed Agreement is also directly supported by the recent decision of the U.S. District Court, for the District of South Dakota, Central Division in Verizon Wireless LLC vs. SDPUC, (CIV 04-3014), dated October 13, 2006. In that decision, the Court denied a Motion for Summary Judgment sought by Verizon Wireless seeking preemption as a matter of law of the provisions of SDCL §§ 49-31-109 through 49-31-115. In doing so, the Court made it very clear that non-local, InterMTA traffic delivered to LECs by CMRS providers is telecommunications traffic that is subject to “access charges.” On page 9 of its decision, the Court indicated that “there are currently two general intercarrier compensation regimes (1) access charges for long-distance traffic; and (2) reciprocal compensation.” The Court further, more specifically, stated that “IntraMTA calls are local calls, whether intrastate or interstate, and are subject to reciprocal compensation. InterMTA calls are non-local calls, whether intrastate or interstate, and are subject to access charges.” (*Emphasis added*, page 14, see also pages 9, 10).

As SDTA has communicated to this Commission in other prior proceedings, it is the position of SDTA that InterMTA CMRS traffic is subject to intrastate and interstate access tariffs, just like all other toll or long distance traffic. SDTA does not believe that there is some separate, third compensation regime that would apply to the toll traffic of CMRS carriers. Accordingly, the parties to the current Agreement before the Commission should not be permitted to simply negotiate away Commission approved rates or other approved regulations (that are part of tariffs) related to switched access services.

Sincerely,



Richard D. Coit, Executive Director and General Counsel  
SDTA

CC: Doug Eidahl  
Talbot J. Wiczorek