

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

IN THE MATTER OF THE COMPLAINT FILED)	
BY KENNEBEC TELEPHONE COMPANY, INC.,)	ORDER DENYING MOTION
AGAINST ALLTEL COMMUNICATIONS, INC.)	FOR SUMMARY JUDGMENT
REGARDING NONPAYMENT OF TRANSITING)	
CHARGES)	TC08-031

On February 20, 2008, Kennebec Telephone Company, Inc. (Kennebec) filed a complaint against Alltel Communications, Inc. (Alltel) for failing to pay charges associated with transiting services. On May 13, 2009, Kennebec filed a Motion for Summary Judgment and Brief, and a Complainant's Statement of Undisputed Material of Facts. On June 1, 2009, Alltel filed a Brief in Opposition to Kennebec's Motion for Summary Judgment and Objection to Claimant's Statement of Alleged Undisputed Material Facts in Support of Motion for Summary Judgment. On June 22, 2009, Kennebec filed a Complainant's Reply Brief in Support of Motion for Summary Judgment. On January 6, 2010, Staff filed a request to schedule an evidentiary hearing and issue a Scheduling Order or to order the parties to engage in scheduling discussions with Commission Counsel to ultimately set a hearing date. On January 15, 2010, the Commission received Alltel Communications, Inc.'s Motion for Summary Judgment for Lack of Subject Matter Jurisdiction. On February 1, 2010, the Commission received Kennebec's Opposition to Alltel's Motion for Summary Judgment and Response to Alltel's Statement of Material Facts and on February 5, 2010, Alltel replied.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31.

On February 9, 2010, the Commission considered the Motion for Summary Judgment for Lack of Subject Matter Jurisdiction. The Commission voted unanimously to deny the Motion for Summary Judgment, finding that it has the jurisdiction to hear this matter.

The Commission can point to numerous statutes that clearly provide the Commission with subject matter jurisdiction over this complaint. In addition to the other provisions of SDCL chapter 49-13, the Commission first notes that SDCL 49-13-1 specifically gives the Commission jurisdiction to hear complaints regarding "anything done or omitted by any telecommunications company or motor carrier subject to the provisions of this title in contravention of the provisions thereof. . . ." SDCL 49-13-1.1 states that "[a]ny person claiming to be damaged by any telecommunications company or motor carrier may either make complaint to the commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in this state . . ." SDCL 49-13-4 authorizes the Commission to investigate complaints. Further, SDCL 49-13-13 sets forth the considerable powers of the Commission to consider complaints and determine remedies:

If, after a hearing pursuant to this chapter, it appears to the satisfaction of the commission that anything has been done or omitted to be done in violation of the provisions of laws of this state, or that any individual or joint rate or charge demanded, charged, collected, or received by any telecommunications company or motor carrier subject to the provisions of this title, or that any individual or joint classifications, regulations, or practices of a telecommunications company or motor carrier are unjust, unreasonable, unjustly discriminatory, unduly preferential, prejudicial, or otherwise in violation of the laws of this state, or that any injury or damage has been sustained by any person, the commission may determine and prescribe the just and reasonable charge, to be observed as the maximum to be charged. The commission shall also determine what classification, regulation, or practice is just, fair, and reasonable to be thereafter followed, and to make an order that such telecommunications company or motor carrier shall cease and desist from the violations to the extent that the commission finds them

to exist. The telecommunications company or motor carrier may not thereafter publish, demand, collect, or receive any rate or charge for in excess of the maximum rate or charge prescribed and they shall adopt the classification and conform and abide by the regulations or practices prescribed by the commission.

SDCL chapter 49-31 provides additional authority for the Commission's subject matter jurisdiction. In addition to other provisions contained in this chapter, SDCL 49-31-3 states that the Commission has "general supervision and control of all telecommunications companies offering common carrier services within the state to the extent such business is not otherwise regulated by federal law or regulation. The commission shall inquire into any complaints, unjust discrimination, neglect, or violation of the laws of the state governing such companies. The commission may exercise powers necessary to properly supervise and control such companies."

The Commission further notes that Kennebec's complaint alleges that Kennebec "provides Alltel with transiting service from its central office in Presho, South Dakota, where it transits the traffic to a meet point with Golden West Telecommunications Cooperative, Inc., along the White River." Kennebec's Complaint at 2-3. Kennebec further claims that Alltel has ceased paying for these transiting services. *Id* at 3. SDCL 49-31-15 and 49-31-18 specifically address the responsibilities of telecommunications companies regarding the provisioning of access to telecommunications facilities and the payment of compensation for such access. SDCL 49-31-15 authorizes the Commission to compel access "to any telecommunications facilities in this state" and "order the access upon such terms and conditions that are found to be in the public interest and apportion the expense of the access." SDCL 49-31-18 addresses the provisioning of access by one telecommunications company to another telecommunications company's facilities and states:

Every telecommunications company shall provide access for any other telecommunications company doing business in the same vicinity that makes application therefor and shall afford all reasonable and proper facilities for such access, for reasonable compensation and without discrimination, and under rules the commission may prescribe. To provide access facilities at reasonable rates and to enhance and preserve universal service, the commission may establish methods designed to determine and implement fair and reasonable access rates by rules promulgated pursuant to chapter 1-26.

Based on the provisions of SDCL chapters 49-13 and 49-31, the Commission finds it has the jurisdiction to consider this matter. It is therefore

ORDERED, that the Motion for Summary Judgment is hereby denied.

Dated at Pierre, South Dakota, this 3rd day of March, 2010.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>[Signature]</u>
Date: <u>3/3/10</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]
DUSTIN M. JOHNSON, Chairman

[Signature]
STEVE KOLBECK, Commissioner

[Signature]
GARY HANSON, Commissioner